



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003- 1895-CD

ERIC O. GILLILAND and BERNADETTE : Document filed: COMPLAINT  
GILLILAND, his wife,  
Defendants : Filed on behalf of:  
Plaintiff

: Counsel for this Party:  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581  
ID# 17621

**FILED**

DEC 31 2003

Jan. 20, 2004 Document  
Reinstated to Sheriff/Attorney  
for service

*Cal*  
Deputy Prothonotary

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

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ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
COURTHOUSE  
CLEARFIELD, PA. 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
Plaintiff

COMPLAINT

AND NOW comes the plaintiff, Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Complaint for Relief and in support thereof avers as follow:

1. The plaintiff is the Houtzdale Municipal Authority, (hereinafter HMA) with its principal place of business located in Houtzdale, Clearfield County, Pennsylvania.

2. The defendants are Eric O. Gilliland and Bernadette Gilliland, his wife, of 1705 Dry Hollow Road, Warriors Mark, Pennsylvania.

3. The defendants are the owners of certain property situate, lying and being in Gulich Township and Woodward Township, more particularly identified in that document entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument Number 200105981, a true and correct copy of which is attached hereto as Exhibit A.

4. The particular properties at issue in this action are those parcels identified as bearing Tax Map Number 118-L16-000-00172 and Number 118-L16-000-00136 as more fully depicted on the retracement map prepared by Unitec Consulting Engineers, Inc. and attached hereto as Exhibit B.

5. The plaintiff herein is the owner of real property in

Gulich Township situate and lying adjacent to Defendants' Tax Parcel Number L16-172 which parcel was acquired by HMA by deed entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Volume 485, Page 372; said property currently bears Clearfield County Assessment Number 118-L17-22.

6. The Houtzdale Municipal Authority has maintained an active water permit for the Moshannon Creek Area as depicted on the map affixed hereto which permit was retained in an active status when the Authority developed its original well field and surface source at Mountain Branch watershed and constructed its water treatment facility in Woodward Township, Clearfield County, Pennsylvania.

7. Through its engineering firm, the Authority recently completed a feasibility study which was approved by the Department of Environmental Protection of the Commonwealth of Pennsylvania to develop a well field and surface water source in the Moshannon Creek Watershed to supplement its water supply and to provide a quantitative and qualitative increase in the water available for transmittal through its system.

8. The existing water line as depicted in red on the map affixed hereto will be replaced with a water line extending from the existing production wells drilled by the Authority on its property near the Moshannon Creek and proceeding through lands owned by the defendants to the existing water treatment plant in Woodward Township for purposes of treatment and inclusion into the existing system.

9. It is essential that the Authority retain access to its

well field, its surface source, and all pumping stations, waterlines, and other facilities needed for the transport of raw, untreated water to its treatment facility which access will be limited, if not completely curtailed, by defendants' misappropriation of the use and control of the existing roadway providing access to Moshannon Creek and the well fields.

10. The plaintiff has recently constructed a series of production and monitoring wells on the property herein identified as the Moshannon Creek Watershed as outlined on the map attached hereto and in addition is engaging in timbering activity in an area to the southeast of the property depicted on said map.

11. The actions of the defendants are without legal basis, without claim of ownership, without color of title and are disruptive and prejudicial to all customers of the Houtzdale Municipal Authority as well as the Authority itself.

12. Subsequent to acquisition of those properties now owned by the defendant, defendant without the permission and consent of the plaintiff and/or any other members of the public which had in the past enjoyed access to the said roadway, constructed a gate on Tax Parcel L16-136 and secured said gate with a chain and lock to which keys were initially distributed to the plaintiff and defendants in order to control access to the respective properties by means of the existing roadway outlined on the map attached hereto in yellow and depicted as a pre-existing 12 foot gravel access road.

13. The plaintiff as part of its municipal mandate has constructed a water line over and across property owned by the

plaintiff and property owned by the defendants and/or their predecessors in title having secured easements for the construction of said water line either by recorded document, by condemnation, or by past usage for a period in excess of 21 years.

14. At all times pertinent hereto and continuing for a period in excess of 21 years the said plaintiff has utilized the existing roadway for purposes of accessing its landholdings in the area of the Moshannon Creek as well as to provide access to the existing pipeline and related facilities depicted herein.

15. Notwithstanding the past history of utilization of the landholdings and the construction of the water line and usage of the pre-existing roadway defendants have now unilaterally prohibited access to and use of the roadway by all members of the general public including HMA officials and have prevented free access over and across the roadway to the plaintiff, its employees, supervisors, agents and assignees.

16. The plaintiff has acquired easements over and across the said existing roadway by usage, by necessity and by prescriptive means through the development of the areas in question which usage has continued for a period in excess of 21 years as required by statute.

17. Plaintiff has now filed this complaint and seeks a preliminary injunction to enjoin the defendants from continuing to illegally occupy, misappropriate, misuse and utilize the roadway which is owned exclusively and/or jointly by the plaintiff and the general public so as to prohibit the lawful use and development of property owned by the plaintiff and located in Gulich Township,

Clearfield County, Pennsylvania, which land is under development as part of a comprehensive well field to qualitatively and quantitatively enhance the resources of the Authority which is constituted as a municipal body charged with the responsibility for providing water resources to the Moshannon Valley.

18. Defendants' flagrant disregard of Plaintiff's and the general public's ownership rights in this roadway is evidenced by its action in prohibiting public access to the roadway commencing on or about December 1, 2003, which prohibition escalated to the point of outright confrontation on or about December 19, 2003, when officers of the Pennsylvania State Police were summoned by the Defendants to prevent Plaintiff's access to its land holdings in the watershed.

19. The Houtzdale Municipal Authority has over the past ten years engaged in a program of deforestation of various landholdings in order to timber certain areas of the watershed and provide an economic stimulus to the Authority in order to keep water rates at a reasonable basis for the consuming public.

20. The Houtzdale Municipal Authority has retained the services of William DeFelice, a registered forester who recommends that certain areas of timber be harvested on a regular and planned basis.

21. The said forester in the past six (6) months recommended that an area of the Houtzdale Municipal Authority landholdings near the Moshannon Creek be let for bid for purposes of economic harvesting and a contract was let with Bowser Lumber Co., Inc. as evidenced by the letter of transmittal directed to the Authority

requesting access to the watershed effective December 17, 2003, a true and correct copy of which letter is affixed hereto as Exhibit C.

22. The said defendants in this matter, on or about December 1, 2003, changed the locks on the gate providing access over the roadway through which the Houtzdale Municipal Authority work force and their independent contractors acquired access to the watershed, the acreage providing the timber available for this particular cut and the wells developed as part of the upgrade of the Moshannon Creek wellfield for use in the overall upgrading of the water system.

23. Prior to this date and time plaintiff and defendants had cooperated in the use of the gate and the locks controlling access to this area it being recognized that a joint effort to control ingress and egress over the roadways was in the best interest of each of the parties concerned.

24. Beginning on or about the 1st day of December, 2003, the defendants unilaterally, illegally and without consultation with the Authority and/or its counsel closed off access to the roadway and prevented all access to the area by members of the Houtzdale Municipal Authority Board of Directors and work force.

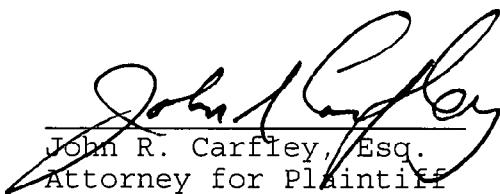
25. The roadway under consideration has been utilized by members of the general public and by the Houtzdale Municipal Authority for decades said use dating back to the early 1900's.

26. In addition said roadway appears on aerial photographs and on all typographic maps depicting rights of way through and across the defendants' property to the Moshannon Creek.

27. Without access over the said roadway plaintiff would be unable to place into service the production wells already drilled at a substantial cost to the Board and to the detriment of the Authority and ultimately the rate payers of the Houtzdale Municipal Authority.

28. These actions of the defendants are arbitrary, capricious, and without regard to the legal rights of the members of the general public as a class and/or the water authority which is mandated by the Commonwealth of Pennsylvania to provide water of a qualitative and quantitative nature to the customer base in the Moshannon Valley area.

WHEREFORE, plaintiff demands that judgment be entered in favor of the Plaintiff and against the Defendants determining legal ownership over the said twelve (12') foot access highway as depicted on the map affixed to this complaint with further directives to the defendants and all similarly situated individuals to cease and desist from any activity in contravention of plaintiff's legal rights as a member of the general public and as a municipal authority seeking access to its landholdings in the area from use of the said roadway together with the costs of this proceeding, legal fees as warranted and interest thereon.



John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: December 31, 2003

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

John W. Andrew

Dated: December 31, 2003

AFFIDAVIT No. 34056

Know All Men By These Presents,

That I, Chester A. Hawkins, High Sheriff of the County of Clearfield, in the State of Pennsylvania, for and in consideration of the sum of One Hundred Forty-Nine Thousand and (\$149,000.00) 00/100 Dollars plus costs, to me in hand paid, do hereby grant and convey to ERIC O. GILLILAND and BERNADETTE GILLILAND, husband and wife, the following described property to wit:

All those certain pieces or parcels of land situate, lying and being in Gulich Township and Woodward Township, Clearfield County, Pennsylvania. Consisting of combined 1,409.701 acres more or less. Identified as the following Clearfield County Tax Map Numbers and Control Numbers:

Tax Map Number	Control Number
118-L16-000-00172	1180-38384
118-L16-000-00181	1180-38385
118-L16-000-00136	1180-38383
118-L16-000-00176	1180-38388
118-M16-000-00010	1180-38362
118-M16-000-00003	1180-38391
118-M16-000-00009	1180-38363
118-M15-531-00027	1180-47133
118-M15-531-00016	1180-38365
118-M15-531-00020	1180-38375
118-M15-531-00021	1180-38372
118-M15-531-00018	1180-38373
118-M15-531-00017	1180-38377
118-M15-531-00019	1180-38374
118-M16-000-00002	1180-38390
130-M15-000-00005	1300-80377
118-M15-531-00025	1180-47131
118-M15-531-00026	1180-47132

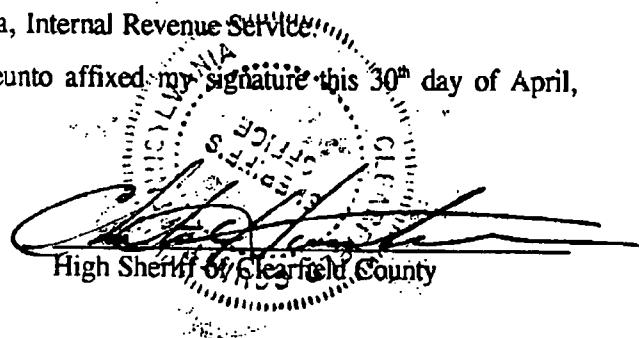
BEING part of the same premises conveyed to Power Land Co., Inc., by deed dated April 18, 1978, and entered for record in Clearfield County Deed Book Volume 758, Page 225. The said Power Land Co., Inc., having merged into Power Operating Co., Inc., by Certificate of Merger dated December 27, 1985, and recorded on January 4, 1986, in Clearfield County Deeds and Records Book 1086, Page 332.

SEIZED, taken in execution and sold as the property of POWER OPERATING CO., INC., a/k/a POWER LAND CO. a/k/a POWER LAND CO., INC. AND THE UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, at the suit of MANUFACTUREES AND TRADERS TRUST COMPANY (M & T), Successor in interest by merger to KEYSTONE FINANCIAL BANK, N.A., (KEYSTONE) Formerly known as MID-STATE BANK AND TRUST. JUDGEMENT NO. 00-1303-CD.



NOW, April 30, 2001, the same having been sold by me to the said Grantee on the 23<sup>rd</sup> day of March Anno Domini two thousand one and after due advertisement according to law, under and by virtue of a Writ of Execution issued on the 18<sup>th</sup> day of January Anno Domini two thousand and one out of the Court of Common Pleas of said County of Clearfield at Docket Number 00-1303-CD, at the suit of Manufacturers and Traders Trust Company (M & T) Successor in interest by merger to Keystone Financial Bank, N.A.. (Keystone) Formerly known as Mid-State Bank and Trust Company, against Power Land and Operating Co., Inc. a/k/a Power Land Co. a/k/a Power Land Co., Inc. and The United States of America, Internal Revenue Service.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 30<sup>th</sup> day of April, Anno Domini Two Thousand One.

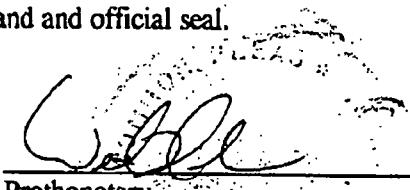


High Sheriff of Clearfield County

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

On this the 30<sup>th</sup> day of April, 2001, before me a Prothonotary, the undersigned officer, personally appeared, **Chester A. Hawkins**, High Sheriff of Clearfield County, Pennsylvania known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity reinstated and for the purposes therein contained.

In witness whereof, I have hereunto set my hand and official seal.



\_\_\_\_\_  
Prothonotary

WILLIAM A. SHAW  
Prothonotary

My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

CERTIFICATE OF RESIDENCE

I hereby certify that the precise residence of the Grantee or Grantees is:

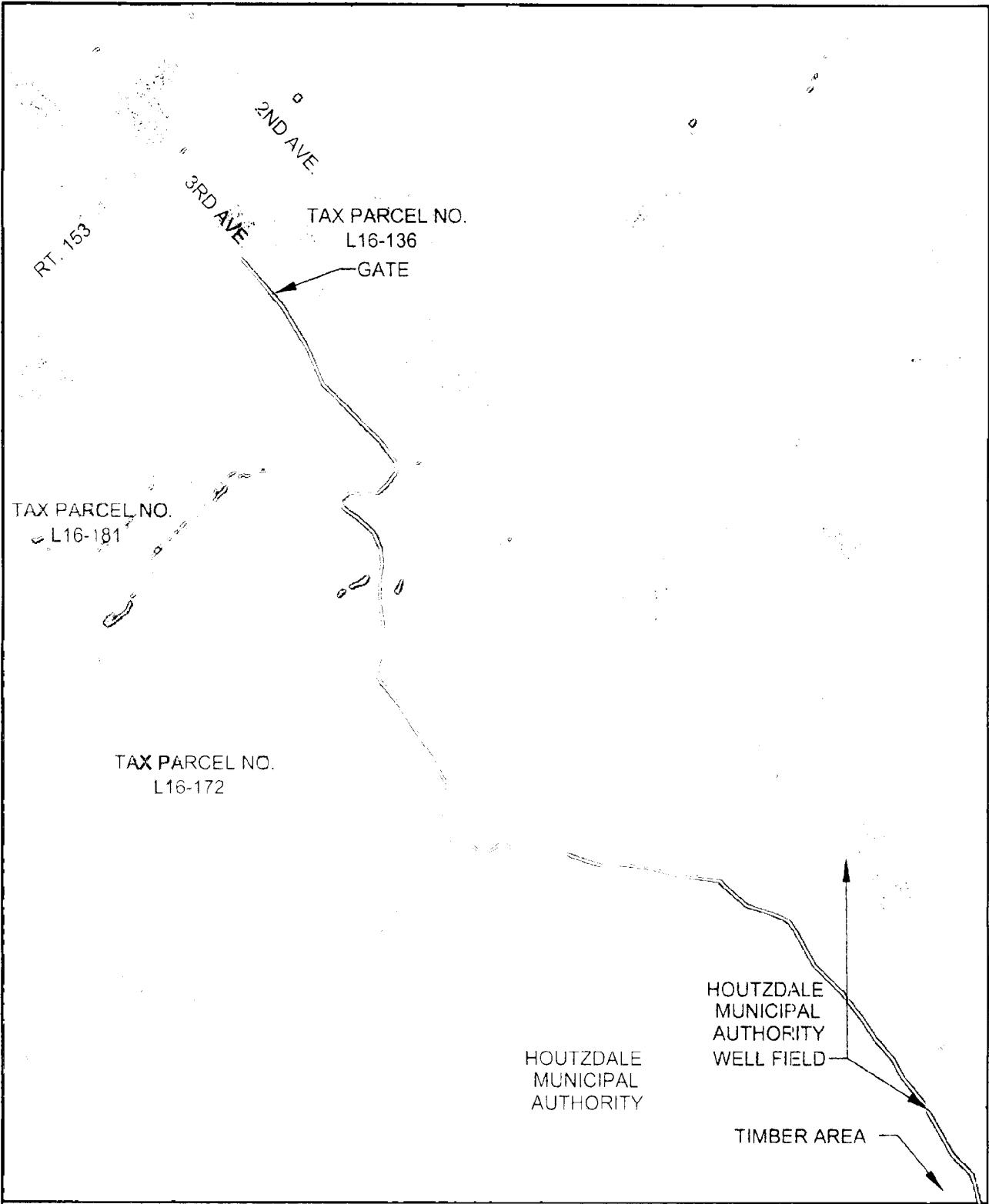
RD 1, Box 464A  
Warriors Mark, PA 16877



\_\_\_\_\_  
Sheriff of Clearfield County

KAREN L. STARCK  
REGISTER AND RECORDER  
CLEARFIELD COUNTY  
Pennsylvania

INSTRUMENT NUMBER	RECORDING FEES -
200105981	\$16.00
RECORDED ON	
APR 30, 2001	
10:44:19 AM	
RECODER	\$1.00
IMPROVEMENT FUND	
STATE TRANSFER	\$4,378.13
FAX	
STATE WRIT TAX	\$0.50
HULICH TOWNSHIP	\$2,189.06
OSHANNON	\$2,189.07
VALLEY SCHOOLS	
TOTAL	\$8,774.76
CUSTOMER	
CLEARFIELD CO SHERIFF	



Uni-Tec  
Consulting  
Engineers, Inc.

ENUE STATE COLLEGE, PA. 16801 (814) 238-8223

ACCESS TO  
HOUTZDALE MUNICIPAL AUTHORITY  
MOSHANNON CREEK WELLS AND  
TIMBERING

SCALE  
1"=1000'  
DRAWING NO.  
018100000  
SHEET NO.  
1 OF 1

**BOWSER LUMBER CO., INC**  
Rough and Finished Lumber  
**8530 COLONEL DRAKE HWY** — **MAHAFFEY, PA 15757**  
Telephone: (814) 277-9956 Fax: (814) 277-9952

December 11, 2003

Houtzdale Municipal Authority  
731 Kirk Street  
Houtzdale, PA 16651

RE: Moshannon Sale #2

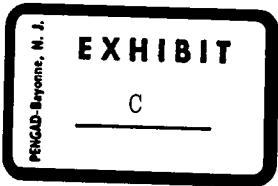
Dear John,

This is to notify you that we are planning to start logging operations on the Moshannon #2 sale December 17, 2003 weather permitting.

Sincerely,

*Ronald Bowser*  
Ronald Bowser

RB/sb



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

CR

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff/Petitioner :  
vs.. : No. 2003- 1895- 4D  
ERIC O. GILLILAND and BERNADETTE : Document filed:  
GILLILAND, his wife, : PETITION FOR INJUNCTIVE  
Defendants/Respondents : RELIEF  
: Filed on behalf of:  
: Plaintiff/petitioner  
: Counsel for this Party:  
: John R. Carfley, Esq.  
: P. O. Box 249  
: Philipsburg, Pa., 16866  
: (814) 342-5581  
: ID# 17621

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff/Petitioner :  
vs. : No. 2003-1895-CJ  
ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife, :  
Defendants/Respondents :  
vs.

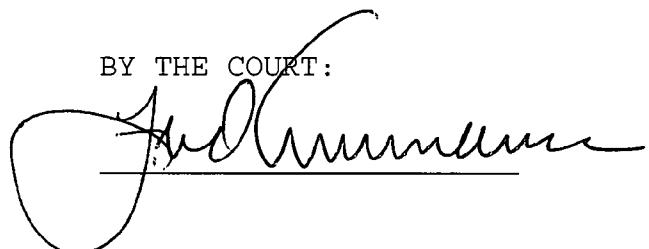
ORDER OF COURT

AND NOW this 31 day of December, 2003, upon consideration of the foregoing Petition for Injunctive Relief, IT IS THE ORDER OF THIS COURT that Respondents appear as directed and show cause why the prayer of said petition should not be permanently granted.

IT IS THE FURTHER ORDER OF THIS COURT that pending a full hearing on the petition for injunctive relief that the said Defendants be and are hereby refrained from any activity contravening the rights of the Plaintiff/Petitioner to utilize the 12 foot unimproved gravel road/easement outlined in yellow on Plaintiff/Petitioner's map affixed to its Petition for Injunctive Relief as Exhibit C and to further cease and desist from any activity preventing the Houtzdale Municipal Authority, its agents, workmen, subcontractors and/or assigns from utilizing the said roadway in a manner consistent with HMA's legal rights therein and to further provide free and unencumbered access to the said Authority to its well fields and landholdings in the Moshannon Creek area all of which is outlined in the Petition and supporting maps and affidavits affixed hereto.

RULE RETURNABLE AND HEARING/CONFERENCE THEREON the 15 day of January, 2004, at 1:30 o'clock A.M. in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



FILED

DEC 31 2003

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
:

PETITION FOR INJUNCTIVE RELIEF

AND NOW comes the plaintiff, Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Petition for Injunctive Relief pursuant to Pa. R.C.P. 1531 and in support thereof avers as follow:

1. The plaintiff is the Houtzdale Municipal Authority, (hereinafter HMA) with its principal place of business located in Houtzdale, Clearfield County, Pennsylvania.

2. The defendants are Eric O. Gilliland and Bernadette Gilliland, his wife, of 1705 Dry Hollow Road, Warriors Mark, Pennsylvania.

3. The defendants are the owners of certain property situate, lying and being in Gulich Township and Woodward Township, more particularly identified in that document entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument Number 200105981, a true and correct copy of which is attached hereto as Exhibit A.

4. The particular properties at issue in this action are those parcels identified as bearing Tax Map Number 118-L16-000-00172 and Number 118-L16-000-00136 as more fully depicted on the

retracement map prepared by Unitec Consulting Engineers, Inc. and attached hereto as Exhibit B.

5. The plaintiff herein is the owner of real property in Gulich Township situate and lying adjacent to Defendants' Tax Parcel Number L16-172 which parcel was acquired by HMA by deed entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Volume 485, Page 372; said property currently bears Clearfield County Assessment Number 118-L17-22.

6. The Houtzdale Municipal Authority has maintained an active water permit for the Moshannon Creek Area as depicted on the map affixed hereto which permit was retained in an active status when the Authority developed its original well field and surface source at Mountain Branch watershed and constructed its water treatment facility in Woodward Township, Clearfield County, Pennsylvania.

7. Through its engineering firm, the Authority recently completed a feasibility study which was approved by the Department of Environmental Protection of the Commonwealth of Pennsylvania to develop a well field and surface water source in the Moshannon Creek Watershed to supplement its water supply and to provide a quantitative and qualitative increase in the water available for transmittal through its system.

8. The existing water line as depicted on the map affixed hereto in red will be replaced with a water line extending from the existing production wells drilled by the Authority on its property near the Moshannon Creek and proceeding through lands owned by the defendants which proposed line is depicted in green on that map

affixed hereto as Exhibit C and extends from the well field at Moshannon Creek to the existing water treatment plant in Woodward Township for purposes of treatment and inclusion into the existing system.

9. It is essential that the Authority retain access to its well field, its surface source, and all pumping stations, waterlines, and other facilities needed for the transport of raw, untreated water to its treatment facility which access will be limited, if not completely curtailed, by defendants' unilateral usurpation of the use and utilization of the existing roadway as indicated by their past actions.

10. The plaintiff has recently constructed a series of production and monitoring wells on the property herein identified and referred to as the Moshannon Creek Watershed as outlined on the map attached hereto and in addition is engaging in timbering activity in an area to the southeast of the property depicted thereon.

11. The actions of the defendants are without legal basis, without claim of ownership, without color of title and disruptive and prejudicial to the entire customer base of the Houtzdale Municipal Authority as well as the Authority itself.

12. Subsequent to acquisition of those properties now owned by the defendant, defendant without the permission and consent of the plaintiff and/or any other members of the public which had in the past utilized the said roadway constructed a gate on Tax Parcel L16-136 and secured said gate with a chain and lock to which keys were initially distributed to the plaintiff and defendants in order

to control the access to the respective properties over and across the roadway outlined on the map attached hereto in yellow and depicted as a pre-existing 12 foot gravel access road.

13. The plaintiff as part of its municipal mandate has constructed a water line over and across property owned by the plaintiff and property owned by the defendants and/or their predecessors in title having secured easements for the construction of said water line either by recorded document, by condemnation, or by past usage for a period in excess of 21 years.

14. At all times pertinent hereto and continuing for a period in excess of 21 years the said plaintiff has utilized the existing roadway for purposes of accessing its landholdings in the area of the Moshannon Creek as well as to provide access to the existing pipeline and related facilities depicted herein.

15. Notwithstanding the past history of utilization of the landholdings and the construction of the water line and usage of the pre-existing roadway defendants have now unilaterally prohibited the use of the roadway by all members of the public including HMA officials and have prevented free access over and across the roadway to the plaintiff, its employees, supervisors, agents and assignees.

16. The plaintiff has acquired easements over and across the said existing roadway by usage, by necessity and by prescriptive use through the development of the areas in question which usage has continued for a period in excess of 21 years as required by statute.

17. Plaintiff filed a complaint in equity with the

prothonotary of this court on December 31, 2003, a true and correct copy of which is attached hereto as Exhibit D.

18. Plaintiff has now filed this complaint in equity and seeks a preliminary injunction to enjoin the defendants from continuing to illegally occupy, misappropriate, misuse and utilize the roadway and any other real property which is owned exclusively and/or jointly by the plaintiff and the general public so as to prohibit the lawful use and development of property owned by the plaintiff and located in Gulich Township, Clearfield County, Pennsylvania, which land is under development as part of a comprehensive well field to qualitatively and quantitatively enhance the resources of the Authority which is constituted as a municipal body charged with the responsibility for providing water resources to the Moshannon Valley.

19. Defendants have demonstrated that they will continue to prevent access to plaintiff's property which will result in real losses to the plaintiff and its customers even though the defendants can assert no exclusive legal ownership or right of entry to the roadway/easement in question. It is further believed that the defendants will continue to reject all efforts to conclude the matter in a reasonable fashion as evidenced by defendants' failure to respond to counsel's letters of August 28, 2002, August 4, 2003 and December 10, 2003, true and correct copies of which are attached hereto as Exhibits E, F, and G.

20. Defendant's flagrant disregard of Plaintiff's and the general public's ownership rights in this roadway is evidenced by its action in prohibiting public access to the roadway commencing

on or about December 1, 2003, which prohibition escalated to the point of outright confrontation on or about December 19, 2003.

21. As more fully set forth in the verified complaint the matters at issue involve the right of possession, control, ownership and right of entry to certain real property acquired by the plaintiff and its predecessors in title in lieu of condemnation and in furtherance of its mandate to provide potable drinking water to the citizenry of the Moshannon Valley.

22. As more fully set forth in the complaint defendant is continuing to usurp, misappropriate, and utilize property belonging to, or used in common by the plaintiff all of which is in violation of the laws of this Commonwealth.

23. The Houtzdale Municipal Authority has over the past ten years engaged in a program of deforestation of various landholdings in order to timber certain select areas of the watershed so as to provide an economic stimulus to the Authority so as to keep water rates at a reasonable basis for the consumer public.

24. The Houtzdale Municipal Authority has retained the services of William DeFelice, a registered forester who recommends that certain areas of timber be harvested on a regular and planned basis.

25. The said forester in the past six (6) months recommended that an area of the Houtzdale Municipal Authority landholdings near the Moshannon Creek be let for bid for purposes of economic harvesting and a contract was let with Bowser Lumber Co., Inc. as evidenced by the letter of transmittal directed to the Authority requesting access to the watershed effective December 17, 2003, a

copy of which letter is affixed hereto as Exhibit H.

26. The said defendant in this matter, on or about December 1, 2003, changed the locks on the gate providing access over the roadway through which the Houtzdale Municipal Authority work force and their independent contractors had access to the watershed, the acreage providing the timber available for this particular cut and the wells developed as part of the upgrade of the Moshannon Creek wellfield for use in the overall upgrading of the water system.

27. Prior to this date and time plaintiff and defendant had cooperated in the use of the gate and the locks controlling access to this area it being recognized that a joint effort to control ingress and egress over the roadways was in the best interest of each of the parties concerned.

28. Beginning on or about the 1st day of December, 2003, the defendant unilaterally, illegally and without consultation with the Authority and/or its counsel closed off access to the roadway and prevented all access to the area by members of the Houtzdale Municipal Authority Board of Directors and work force.

29. The roadway under consideration has been utilized by members of the general public and by the Houtzdale Municipal Authority for decades said use dating back to the early 1900's.

30. In addition said roadway appears on aerial photographs and on all typographic maps depicting entrance ways through and across the defendant's property to the Moshannon Creek.

31. Without access over the said roadway plaintiff would be unable to put into service the production wells already drilled at a substantial cost to the Board and to the detriment of the

Authority and ultimately the rate payers of the Houtzdale Municipal Authority.

32. That the actions of the defendant are arbitrary, capricious, and without regard to the legal rights of the members of the general public and/or the water authority which is mandated by the Commonwealth of Pennsylvania to provide water of a qualitative and quantitative nature to the customer base in the Moshannon Valley area.

33. Plaintiff as a municipal authority has the right of entry by virtue of its power of Eminent Domain but considers the use of such power to be unnecessary, uneconomic and excessive given the history of usage and the establishment of the easement and right of way by necessity, by usage, and by adverse possession.

34. The actions undertaken by the defendant in this matter are without legal basis and should give rise to a claim for damages including but not limited to counsel fees and costs.

35. Although demand has been made upon the defendant to provide proof of legal ownership of the roadway and/or some other legal basis for the assertion that the defendant has sole and exclusive right to the use of the said roadway, no documents have been forthcoming from the defendant and/or any counsel acting on his behalf.

36. Plaintiff has no adequate remedy at law to redress the current and impending harm from the defendants continued conduct.

37. Defendants' conduct will also threaten any structures placed upon the subject tract by plaintiff in furtherance of its municipal duties including but not limited to a pump station, water

line, electrical service, and other miscellaneous equipment and facilities.

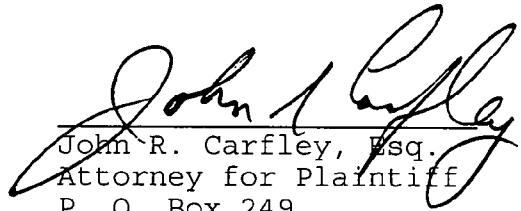
38. Defendants' actions in mis-appropriating this roadway has also placed the Plaintiff at risk with local planning agencies in that the defendants' construction of this water line, well field and treatment system would be considered a major land development in Clearfield County and the defendants have failed to consider and/or comply with land acquisition, land utilization or other zoning or subdivision regulations or ordinances or to notify the appropriate local officials of their intent and/or plan of development.

39. Defendants will not suffer any appreciable or irreparable injury if the requested preliminary injunction is issued because the status quo between the parties will be restored to where it was before defendant's wrongful conduct began. Defendants will merely be restrained from taking advantage of its wrongful acts and further be prevented from continuing to cause waste to real and personal property owned by the plaintiffs and/or other specified parties in question.

40. The plaintiff is likely to succeed on the merits of its claim in that the Plaintiff can assert joint legal title to the premises and defendant has no legal or equitable claim to support its unilateral and ex parte entry on the premises.

WHEREFORE, petitioner requests this Honorable Court to enter judgment in favor of Plaintiff/petitioner and against the Defendants requiring the free and uninterrupted use of the roadway by the Plaintiff/petitioner consistent with its rights and

ownership interest therein together with legal fees and costs of this proceeding and such other legal and/or equitable relief that the court may deem appropriate.



John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: December 31, 2003

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

John W. Anderson

Dated: December 31, 2003

AFFIDAVIT No. 34056

Know All Men By These Presents,

That I, Chester A. Hawkins, High Sheriff of the County of Clearfield, in the State of Pennsylvania, for and in consideration of the sum of One Hundred Forty-Nine Thousand and (\$149,000.00) 00/100 Dollars plus costs, to me in hand paid, do hereby grant and convey to ERIC O. GILLILAND and BERNADETTE GILLILAND, husband and wife, the following described property to wit:

All those certain pieces or parcels of land situate, lying and being in Gulich Township and Woodward Township, Clearfield County, Pennsylvania. Consisting of combined 1,409.701 acres more or less. Identified as the following Clearfield County Tax Map Numbers and Control Numbers:

Tax Map Number	Control Number
118-L16-000-00172	1180-38384
118-L16-000-00181	1180-38385
118-L16-000-00136	1180-38383
118-L16-000-00176	1180-38388
118-M16-000-00010	1180-38362
118-M16-000-00003	1180-38391
118-M16-000-00009	1180-38363
118-M15-531-00027	1180-47133
118-M15-531-00016	1180-38365
118-M15-531-00020	1180-38375
118-M15-531-00021	1180-38372
118-M15-531-00018	1180-38373
118-M15-531-00017	1180-38377
118-M15-531-00019	1180-38374
118-M16-000-00002	1180-38390
130-M15-000-00005	1300-80377
118-M15-531-00025	1180-47131
118-M15-531-00026	1180-47132

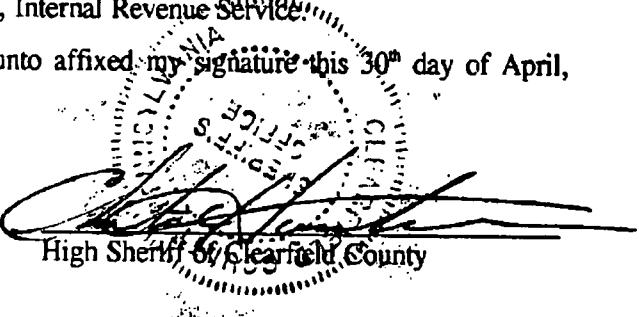
BEING part of the same premises conveyed to Power Land Co., Inc., by deed dated April 18, 1978, and entered for record in Clearfield County Deed Book Volume 758, Page 225. The said Power Land Co., Inc., having merged into Power Operating Co., Inc., by Certificate of Merger dated December 27, 1985, and recorded on January 4, 1986, in Clearfield County Deeds and Records Book 1086, Page 332.

SEIZED, taken in execution and sold as the property of POWER OPERATING CO., INC., a/k/a POWER LAND CO. a/k/a POWER LAND CO., INC. AND THE UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, at the suit of MANUFACTUREES AND TRADERS TRUST COMPANY (M & T), Successor in interest by merger to KEYSTONE FINANCIAL BANK, N.A., (KEYSTONE) Formerly known as MID-STATE BANK AND TRUST. JUDGEMENT NO. 00-1303-CD.



NOW, April 30, 2001, the same having been sold by me to the said Grantee on the 23<sup>rd</sup> day of March Anno Domini two thousand one and after due advertisement according to law, under and by virtue of a Writ of Execution issued on the 18<sup>th</sup> day of January Anno Domini two thousand and one out of the Court of Common Pleas of said County of Clearfield at Docket Number 00-1303-CD, at the suit of Manufacturers and Traders Trust Company (M & T) Successor in interest by merger to Keystone Financial Bank, N.A., (Keystone) Formerly known as Mid-State Bank and Trust Company, against Power Land and Operating Co., Inc. a/k/a Power Land Co. a/k/a Power Land Co., Inc. and The United States of America, Internal Revenue Service.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 30<sup>th</sup> day of April, Anno Domini Two Thousand One.

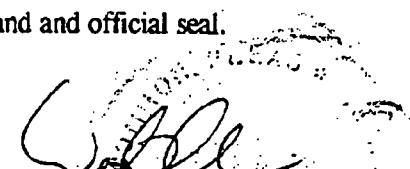


High Sheriff of Clearfield County

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

On this the 30<sup>th</sup> day of April, 2001, before me a Prothonotary, the undersigned officer, personally appeared, **Chester A. Hawkins**, High Sheriff of Clearfield County, Pennsylvania known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity reinstated and for the purposes therein contained.

In witness whereof, I have hereunto set my hand and official seal.



\_\_\_\_\_  
Prothonotary

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

I hereby certify that the precise residence of the Grantee or Grantees is:

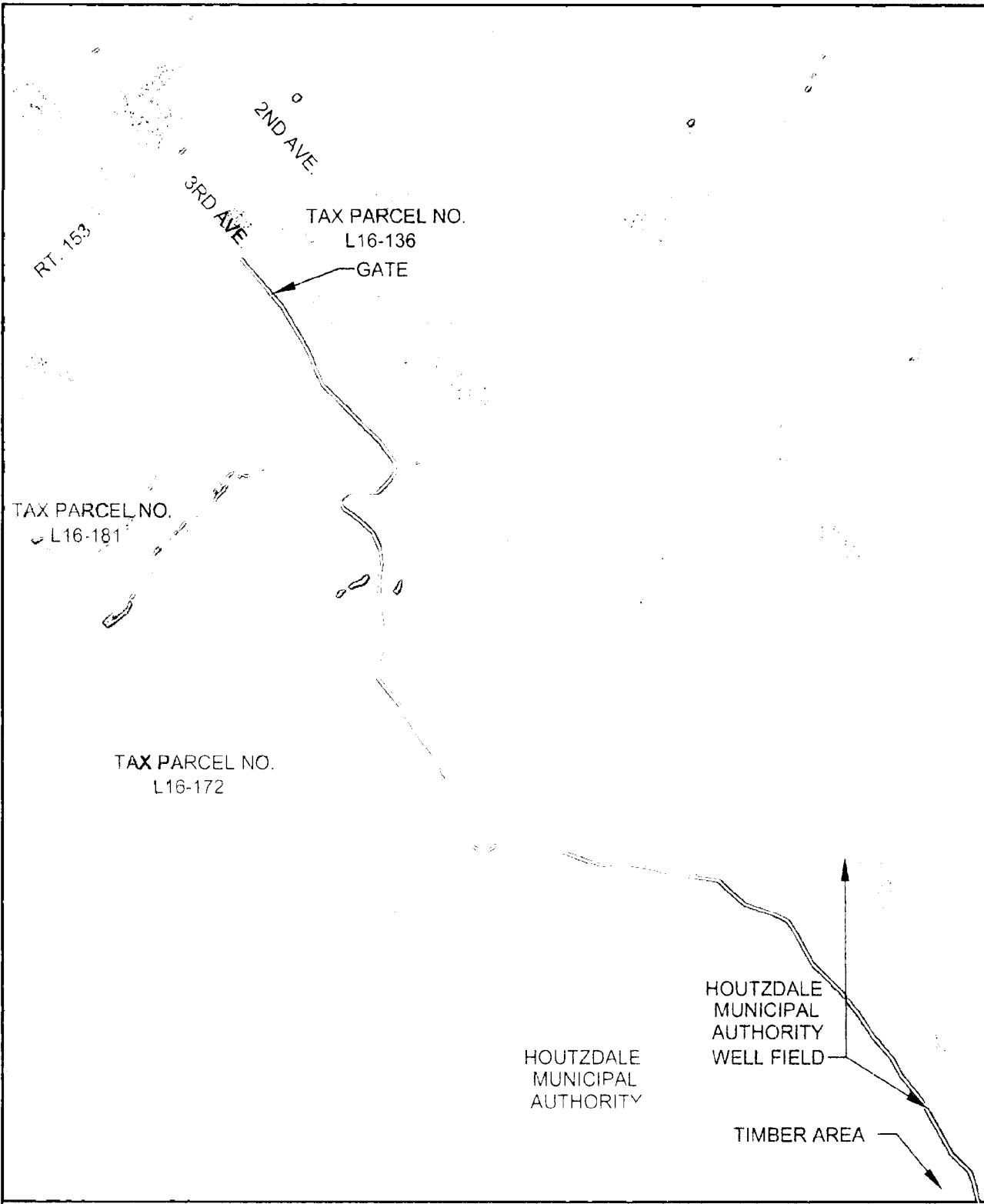
RD 1, Box 464A  
Warriors Mark, PA 16877



\_\_\_\_\_  
Sheriff of Clearfield County

KAREN L. STARCK  
REGISTER AND RECORDER  
CLEARFIELD COUNTY  
Pennsylvania

INSTRUMENT NUMBER	200105981	RECORDING FEES -	\$16.00
RECORDED ON	APR 30, 2001	COUNTY IMPROVEMENT FUND	\$1.00
	10:44:19 AM	RECORDER	\$1.00
		IMPROVEMENT FUND	
		STATE TRANSFER	\$4,378.13
		FAX	
		STATE WRIT TAX	\$0.50
		JULIET TOWNSHIP	\$2,189.06
		ISCHARHON	\$2,189.07
		VALLEY SCHOOLS	
		OTAL	\$8,774.76
		CUSTOMER	
		CLEARFIELD CO SHERIFF	



2007 CATO AVENUE STATE CO.

Uni-Tec  
Consulting  
Eng.

EXHIBIT

B

ACCESS TO  
HOUTZDALE MUNICIPAL AUTHORITY  
MOSHANNON CREEK WELLS AND  
TIMBERING

SCALE  
1"=1000'  
DRAWING NO.  
018100000  
SHEET NO.  
1 OF 1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003- 1895- CD

ERIC O. GILLILAND and BERNADETTE : Document filed: COMPLAINT  
GILLILAND, his wife,  
Defendants : Filed on behalf of:  
Plaintiff

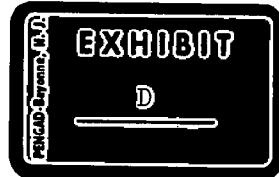
: Counsel for this Party:  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581  
ID# 17621

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

DEC 31 2003

Attest.

*William L. Brown*  
Prothonotary/  
Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife, :  
Defendants :  
:

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
COURTHOUSE  
CLEARFIELD, PA. 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :

COMPLAINT

AND NOW comes the plaintiff, Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Complaint for Relief and in support thereof avers as follow:

1. The plaintiff is the Houtzdale Municipal Authority, (hereinafter HMA) with its principal place of business located in Houtzdale, Clearfield County, Pennsylvania.

2. The defendants are Eric O. Gilliland and Bernadette Gilliland, his wife, of 1705 Dry Hollow Road, Warriors Mark, Pennsylvania.

3. The defendants are the owners of certain property situate, lying and being in Gulich Township and Woodward Township, more particularly identified in that document entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument Number 200105981, a true and correct copy of which is attached hereto as Exhibit A.

4. The particular properties at issue in this action are those parcels identified as bearing Tax Map Number 118-L16-000-00172 and Number 118-L16-000-00136 as more fully depicted on the retracement map prepared by Unitec Consulting Engineers, Inc. and attached hereto as Exhibit B.

5. The plaintiff herein is the owner of real property in

Gulich Township situate and lying adjacent to Defendants' Tax Parcel Number L16-172 which parcel was acquired by HMA by deed entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Volume 485, Page 372; said property currently bears Clearfield County Assessment Number 118-L17-22.

6. The Houtzdale Municipal Authority has maintained an active water permit for the Moshannon Creek Area as depicted on the map affixed hereto which permit was retained in an active status when the Authority developed its original well field and surface source at Mountain Branch watershed and constructed its water treatment facility in Woodward Township, Clearfield County, Pennsylvania.

7. Through its engineering firm, the Authority recently completed a feasibility study which was approved by the Department of Environmental Protection of the Commonwealth of Pennsylvania to develop a well field and surface water source in the Moshannon Creek Watershed to supplement its water supply and to provide a quantitative and qualitative increase in the water available for transmittal through its system.

8. The existing water line as depicted in red on the map affixed hereto will be replaced with a water line extending from the existing production wells drilled by the Authority on its property near the Moshannon Creek and proceeding through lands owned by the defendants to the existing water treatment plant in Woodward Township for purposes of treatment and inclusion into the existing system.

9. It is essential that the Authority retain access to its

well field, its surface source, and all pumping stations, waterlines, and other facilities needed for the transport of raw, untreated water to its treatment facility which access will be limited, if not completely curtailed, by defendants' misappropriation of the use and control of the existing roadway providing access to Moshannon Creek and the well fields.

10. The plaintiff has recently constructed a series of production and monitoring wells on the property herein identified as the Moshannon Creek Watershed as outlined on the map attached hereto and in addition is engaging in timbering activity in an area to the southeast of the property depicted on said map.

11. The actions of the defendants are without legal basis, without claim of ownership, without color of title and are disruptive and prejudicial to all customers of the Houtzdale Municipal Authority as well as the Authority itself.

12. Subsequent to acquisition of those properties now owned by the defendant, defendant without the permission and consent of the plaintiff and/or any other members of the public which had in the past enjoyed access to the said roadway, constructed a gate on Tax Parcel L16-136 and secured said gate with a chain and lock to which keys were initially distributed to the plaintiff and defendants in order to control access to the respective properties by means of the existing roadway outlined on the map attached hereto in yellow and depicted as a pre-existing 12 foot gravel access road.

13. The plaintiff as part of its municipal mandate has constructed a water line over and across property owned by the

plaintiff and property owned by the defendants and/or their predecessors in title having secured easements for the construction of said water line either by recorded document, by condemnation, or by past usage for a period in excess of 21 years.

14. At all times pertinent hereto and continuing for a period in excess of 21 years the said plaintiff has utilized the existing roadway for purposes of accessing its landholdings in the area of the Moshannon Creek as well as to provide access to the existing pipeline and related facilities depicted herein.

15. Notwithstanding the past history of utilization of the landholdings and the construction of the water line and usage of the pre-existing roadway defendants have now unilaterally prohibited access to and use of the roadway by all members of the general public including HMA officials and have prevented free access over and across the roadway to the plaintiff, its employees, supervisors, agents and assignees.

16. The plaintiff has acquired easements over and across the said existing roadway by usage, by necessity and by prescriptive means through the development of the areas in question which usage has continued for a period in excess of 21 years as required by statute.

17. Plaintiff has now filed this complaint and seeks a preliminary injunction to enjoin the defendants from continuing to illegally occupy, misappropriate, misuse and utilize the roadway which is owned exclusively and/or jointly by the plaintiff and the general public so as to prohibit the lawful use and development of property owned by the plaintiff and located in Gulich Township,

Clearfield County, Pennsylvania, which land is under development as part of a comprehensive well field to qualitatively and quantitatively enhance the resources of the Authority which is constituted as a municipal body charged with the responsibility for providing water resources to the Moshannon Valley.

18. Defendants' flagrant disregard of Plaintiff's and the general public's ownership rights in this roadway is evidenced by its action in prohibiting public access to the roadway commencing on or about December 1, 2003, which prohibition escalated to the point of outright confrontation on or about December 19, 2003, when officers of the Pennsylvania State Police were summoned by the Defendants to prevent Plaintiff's access to its land holdings in the watershed.

19. The Houtzdale Municipal Authority has over the past ten years engaged in a program of deforestation of various landholdings in order to timber certain areas of the watershed and provide an economic stimulus to the Authority in order to keep water rates at a reasonable basis for the consuming public.

20. The Houtzdale Municipal Authority has retained the services of William DeFelice, a registered forester who recommends that certain areas of timber be harvested on a regular and planned basis.

21. The said forester in the past six (6) months recommended that an area of the Houtzdale Municipal Authority landholdings near the Moshannon Creek be let for bid for purposes of economic harvesting and a contract was let with Bowser Lumber Co., Inc. as evidenced by the letter of transmittal directed to the Authority

requesting access to the watershed effective December 17, 2003, a true and correct copy of which letter is affixed hereto as Exhibit C.

22. The said defendants in this matter, on or about December 1, 2003, changed the locks on the gate providing access over the roadway through which the Houtzdale Municipal Authority work force and their independent contractors acquired access to the watershed, the acreage providing the timber available for this particular cut and the wells developed as part of the upgrade of the Moshannon Creek wellfield for use in the overall upgrading of the water system.

23. Prior to this date and time plaintiff and defendants had cooperated in the use of the gate and the locks controlling access to this area it being recognized that a joint effort to control ingress and egress over the roadways was in the best interest of each of the parties concerned.

24. Beginning on or about the 1st day of December, 2003, the defendants unilaterally, illegally and without consultation with the Authority and/or its counsel closed off access to the roadway and prevented all access to the area by members of the Houtzdale Municipal Authority Board of Directors and work force.

25. The roadway under consideration has been utilized by members of the general public and by the Houtzdale Municipal Authority for decades said use dating back to the early 1900's.

26. In addition said roadway appears on aerial photographs and on all typographic maps depicting rights of way through and across the defendants' property to the Moshannon Creek.

27. Without access over the said roadway plaintiff would be unable to place into service the production wells already drilled at a substantial cost to the Board and to the detriment of the Authority and ultimately the rate payers of the Houtzdale Municipal Authority.

28. These actions of the defendants are arbitrary, capricious, and without regard to the legal rights of the members of the general public as a class and/or the water authority which is mandated by the Commonwealth of Pennsylvania to provide water of a qualitative and quantitative nature to the customer base in the Moshannon Valley area.

WHEREFORE, plaintiff demands that judgment be entered in favor of the Plaintiff and against the Defendants determining legal ownership over the said twelve (12') foot access highway as depicted on the map affixed to this complaint with further directives to the defendants and all similarly situated individuals to cease and desist from any activity in controvention of plaintiff's legal rights as a member of the general public and as a municipal authority seeking access to its landholdings in the area from use of the said roadway together with the costs of this proceeding, legal fees as warranted and interest thereon.



John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: December 31, 2003

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

John W. Andrew

Dated: December 31, 2003

AFFIDAVIT No. 34056

Know All Men By These Presents,

That I, Chester A. Hawkins, High Sheriff of the County of Clearfield, in the State of Pennsylvania, for and in consideration of the sum of One Hundred Forty-Nine Thousand and (\$149,000.00) 00/100 Dollars plus costs, to me in hand paid, do hereby grant and convey to **ERIC O. GILLILAND and BERNADETTE GILLILAND**, husband and wife, the following described property to wit:

All those certain pieces or parcels of land situate, lying and being in Gulich Township and Woodward Township, Clearfield County, Pennsylvania. Consisting of combined 1,409.701 acres more or less. Identified as the following Clearfield County Tax Map Numbers and Control Numbers:

Tax Map Number	Control Number
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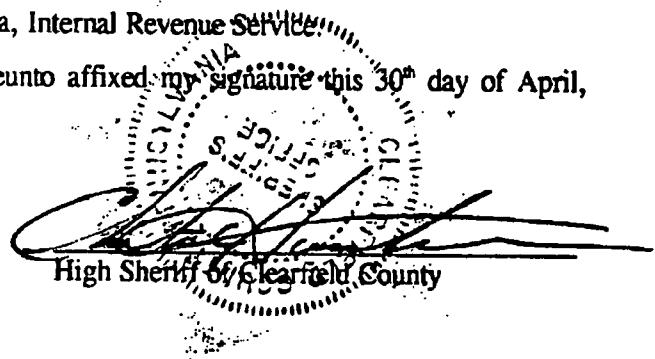
BEING part of the same premises conveyed to Power Land Co., Inc., by deed dated April 18, 1978, and entered for record in Clearfield County Deed Book Volume 758, Page 225. The said Power Land Co., Inc., having merged into Power Operating Co., Inc., by Certificate of Merger dated December 27, 1985, and recorded on January 4, 1986, in Clearfield County Deeds and Records Book 1086, Page 332.

SEIZED, taken in execution and sold as the property of POWER OPERATING CO., INC., a/k/a POWER LAND CO. a/k/a POWER LAND CO., INC. AND THE UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, at the suit of MANUFACTUREES AND TRADERS TRUST COMPANY (M & T), Successor in interest by merger to KEYSTONE FINANCIAL BANK, N.A., (KEYSTONE) Formerly known as MID-STATE BANK AND TRUST. JUDGEMENT NO. 00-1303-CD.



NOW, April 30, 2001, the same having been sold by me to the said Grantee on the 23<sup>rd</sup> day of March Anno Domini two thousand one and after due advertisement according to law, under and by virtue of a Writ of Execution issued on the 18<sup>th</sup> day of January Anno Domini two thousand and one out of the Court of Common Pleas of said County of Clearfield at Docket Number 00-1303-CD, at the suit of Manufacturers and Traders Trust Company (M & T) Successor in interest by merger to Keystone Financial Bank, N.A.. (Keystone) Formerly known as Mid-State Bank and Trust Company, against Power Land and Operating Co., Inc. a/k/a Power Land Co. a/k/a Power Land Co., Inc. and The United States of America, Internal Revenue Service.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 30<sup>th</sup> day of April, Anno Domini Two Thousand One.

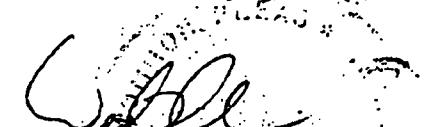


High Sheriff of Clearfield County

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

On this the 30<sup>th</sup> day of April, 2001, before me a Prothonotary, the undersigned officer, personally appeared, **Chester A. Hawkins**, High Sheriff of Clearfield County, Pennsylvania known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity reinstated and for the purposes therein contained.

In witness whereof, I have hereunto set my hand and official seal.



Prothonotary

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

I hereby certify that the precise residence of the Grantee or Grantees is:

RD 1, Box 464A  
Warriors Mark, PA 16877



Sheriff of Clearfield County

KAREN L. STARCK  
REGISTER AND RECORDER  
CLEARFIELD COUNTY  
Pennsylvania

INSTRUMENT NUMBER	200105981
RECORDED ON	APR 30, 2001
	10:44:19 AM
RECORDING FEES -	\$16.00
RECORDER	COUNTY IMPROVEMENT FUND
	\$1.00
RECORDER	IMPROVEMENT FUND
	\$1.00
STATE TRANSFER	\$4,373.13
TAX	
STATE WRIT TAX	\$0.50
HILICH TOWNSHIP	\$2,189.06
JOHANNON	\$2,189.07
ALLEY SCHOOLS	
OTAL	\$8,774.76
CUSTOMER	
CLEARFIELD CO SHERIFF	



LEGEND

PROPERTY LINE  
EXISTING WATER LINE

PREEXISTING 12' GRAVEL ACCESS ROAD

Uni-Tec  
Consulting  
Engineers, Inc.

ACCESS TO  
HOUTZDALE MUNICIPAL AUTHORITY  
MOSHANNON CREEK WELLS AND  
TIMBERING

SCALE  
1"=1000'

DRAWING NO.  
01810000

SHEET NO.  
1 OF 1

EXHIBIT

B-1

ENUE STATE COLLEGE, PA. 16801 (814) 238-8223

# BOWSER LUMBER CO., INC

Rough and Finished Lumber

8530 COLONEL DRAKE HWY

MAHAFFEY, PA 15757

Telephone: (814) 277-9956 Fax: (814) 277-9952

December 11, 2003

Houtzdale Municipal Authority  
731 Kirk Street  
Houtzdale, PA 16651

RE: Moshannon Sale #2

Dear John,

This is to notify you that we are planning to start logging operations on the Moshannon #2 sale December 17, 2003 weather permitting.

Sincerely,

*Ronald Bowser*  
Ronald Bowser

RB/sb



August 4, 2003

Mr. & Mrs. Eric Gilliland  
1705 Dry Hollow Road  
Warriors Mark, Pa., 16877

RE: Houtzdale Municipal Authority

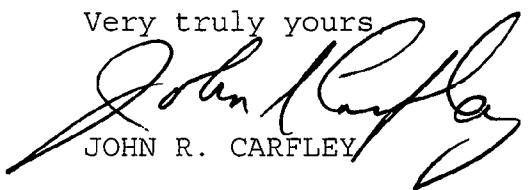
Dear Mr. & Mrs. Gilliland:

I have reviewed the correspondence directed to you by the Houtzdale Municipal Authority dated July 14, 2003 and your response of July 26, 2003. Be advised that the logging operation which is scheduled to begin on August 15, 2003, will commence as scheduled and will utilize the roadway which enters and crosses your property through the gate from Route 153 to the Moshannon Creek Area owned by the Houtzdale Municipal Authority. If you wish to prevent access by HMA it will be necessary for you to secure a court order to prevent that access and will result in litigation including a request for the posting of bond if, in fact, you seek to delay the timely commencement and completion of the timbering operations.

I suggest that we try to work out an amicable resolution of this situation perhaps benefitting both of the parties. Any attempts, however, to restrict a roadway which has been utilized for access to HMA property for decades will be strongly opposed by the Board and in my opinion will be resolved favorably for the Board at this time.

Please feel free to contact me to discuss this matter in further detail or have your attorney contact me if you deem it appropriate.

Very truly yours

  
JOHN R. CARFLEY

JRC:sm

CC: HMA



August 28, 2002

Mr. & Mrs. Eric Gilliland  
1705 Dry Hollow Road  
Warriors Mark, Pa., 16877

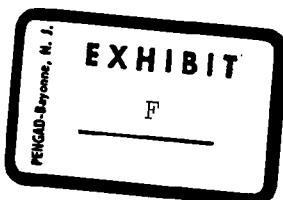
RE: Houtzdale Municipal Authority

Dear Mr. & Mrs. Gilliland:

I received a copy of the letter which you forwarded to the Houtzdale Municipal Authority concerning the rights of way over property which you currently own in Gulich Township, Clearfield County, Pennsylvania. I am in the process of searching the records in Clearfield County for proof of recorded right of way agreements for both the roadway and the pipeline facilities. Notwithstanding the existence of those documents, it is our position that the use of the roadway and the pipeline right of way has been secured by prescription and/or usage over the years and may not unilaterally be terminated or interfered with by the current landowner.

Before undertaking any action to restrict entry over, through and across your property I would suggest that you consult with legal counsel to review the potential consequences of your action.

If you attempt to restrict the Authority's use of the roadway or any other facilities which have been constructed on your property by HMA and/or its predecessors in title, we will be left with no recourse but to file an action in the court seeking the court's assistance in providing free access to the premises and to further compensate the Authority for the fees and costs which they incur in reestablishing rights that have historically been utilized by the Authority. I am sure you realize that the roadway provides access to the Authority to the Moshannon Creek watershed which is currently under development for production wells in order to supplement the input to the treatment facility located outside of Houtzdale Borough. It is imperative that the roadway remain open because of the need to access the headwaters of the Moshannon Creek which provides the source for the above ground water resources and also the land upon which the production wells and monitoring wells will eventually be bored in order to integrate this facility into the overall system.

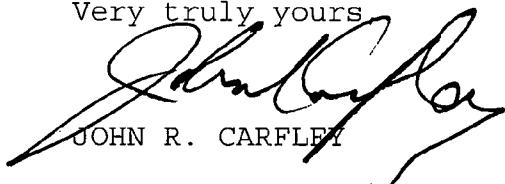


(2)

What you may be unaware of is that the Authority is also in the process of leasing timber in that area for purposes of raising revenue as part of their long term management plan. If you block or interfere with access to these areas you will not only risk suit by way of an injunctive action to open the roadway but also for money damages should the sale of the timber be disrupted and losses incurred or should the Moshannon Creek project be delayed in its presentation to the DEP.

I suggest that you consider your actions before litigation since such action is rarely economically feasible for either of the parties involved..

Very truly yours,



JOHN R. CARFLEY

JRC:sm

CC: HMA

JOHN R. CARFLEY  
ATTORNEY AT LAW  
222 PRESQUEISLE STREET  
P. O. BOX 249  
PHILIPSBURG, PENNSYLVANIA 16866

December 10, 2003

AREA CODE 814  
TELEPHONE 342-5581  
FAX 342-1127

Mr. & Mrs. Eric Gilliland  
1705 Dry Hollow Road  
Warriors Mark, Pa., 16877

RE: Houtzdale Municipal Authority

Dear Mr. & Mrs. Gilliland:

As you know I am the solicitor for the Houtzdale Municipal Authority. At the regular meeting of the Board of Directors held on Tuesday, December 9, 2003, it was brought to my attention that you have changed the locks on the gate for the roadway which provides access to HMA to its land holdings near the Moshannon Creek in an area where they are currently developing four wells for incorporation into the existing water distribution system. The feasibility study for the implementation of the Moshannon Creek Well Field has been approved by DEP and the plan is currently under development by Unitec Engineering of State College with a goal to begin construction during calendar year, 2004, with completion of the project scheduled for sometime in calendar year, 2005.

The engineers working with supervisory personnel of the Authority are currently planning the most efficient pipeline route from the well field to the existing treatment plant in Woodward Township. Many factors are being taken into consideration in the location of the waterline, however, when the decision is ultimately made the rights of way necessary to construct the line will be either purchased outright from effected landowners or will be subject to condemnation proceedings for the forced acquisition of the necessary easements. It is imperative that access to the watershed be secure during that critical phase of the project.

I am taking the time to brief you on the future plans of the Authority in order to emphasize to you the importance of the Authority being able to access its properties, the watershed and in the future its pump-stations, water lines and other service facilities.

I take issue with your action in precluding individuals from using the roadway for a number of reasons: First and foremost I would like to point out that this road appears on all existing maps and is depicted on aerial photographs which photographs were taken in the nineteen fourties and nineteen fifties. I have also been advised by the Board Members that this road has, in fact, been



JOHN R. CARFLEY

ATTORNEY AT LAW

222 PRESQUEISLE STREET

JOHN R. CARFLEY

ATTORNEY AT LAW

222 PRESQUEISLE STREET

P. O. BOX 249

PHILIPSBURG, PENNSYLVANIA 16866

(2)

AREA CODE 814  
TELEPHONE 342-5581  
FAX 342-1127

utilized for generations not only by the Authority but by members of the general public to access State Game lands and other land holdings in the area. If that proves to be the case, an easement has been acquired by the general public and certainly by landowners in the area who require this roadway to remain open as a means of access. These principles are spelled out in the text "Ladner, Conveyancing in Pennsylvania" which is the most respected source for discussion of real estate law in the Commonwealth.

Secondly, it is inconceivable that any court would preclude a municipal authority's right to expand an existing water facility given today's ecological climate and the need for substantial quantitative sources of water in all areas and in particular the Moshannon Valley. Should you persist in blocking access to the roadway and by implication the Houtzdale wellfield, we will simply have to turn to the courts to secure an injunction to remove these obstructions and/or in the alternative to institute an action of condemnation to secure ownership over the roadway so that no future question will arise as to the legal title to the property.

Thirdly I would like you to be made aware of the fact that HMA has undertaken a regular regimen of harvesting timber from various areas as recommended by their forester. An area near Moshannon Creek is now under contract to be timbered. This area is on HMA property near the Moshannon Creek and this will require access over and across the roadway which you are currently obstructing. I have received notice from the forester that timbering will begin as soon as the ground is frozen which means that we should be looking to a mid December starting date for the operation. (Please see the letter attached hereto) If you obstruct access to this facility and the Board is required to breach its contract with the forester we will be looking at economic losses of between \$30,000.00 and \$50,000.00 and will hold you directly responsible for that loss since no other means of access is available to this particular tract.

I want you to understand that this is not simply a matter of denying members of the general public use of the roadway to access State Game Lands for hunting. You are dealing with a municipal authority which is mandated to provide an adequate water source to the treatment facility for distribution throughout the system. Any attempt by you to obstruct and/or prevent this access to HMA lands to inspect or develop production wells in the area or the pipelines, pump-stations and other facilities necessary to transport the water to the main treatment facility will be

**BOWSER LUMBER CO., INC**

Rough and Finished Lumber

**8530 COLONEL DRAKE HWY****MAHAFFEY, PA 15757**

Telephone: (814) 277-9956 Fax: (814) 277-9952

December 11, 2003

Houtzdale Municipal Authority  
731 Kirk Street  
Houtzdale, PA 16651

RE: Moshannon Sale #2

Dear John,

This is to notify you that we are planning to start logging operations on the Moshannon #2 sale December 17, 2003 weather permitting.

Sincerely,

  
Ronald Bowser

RB/sb



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOJTDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants/Respondents

\*  
\* No. 2003-1895-CD  
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\* TYPE OF CASE: Civil Action  
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\*  
\* TYPE OF PLEADING: Praeclipe for  
\* Entry of Appearance  
\*  
\* FILED ON BEHALF OF:  
\* DEFENDANTS  
\*  
\* ATTORNEY FOR DEFENDANTS:  
\* David C. Mason, Esquire  
\* Supreme Court ID #39180  
\* DAVID C. MASON LAW OFFICE  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240  
\*  
\* ATTORNEY FOR PLAINTIFF:  
\* John R. Carfley, Esquire  
\* Supreme Court ID #17621  
\* P. O. Box 249  
\* Philipsburg, PA 16866  
\* (814) 342-5581

FILED

JAN 13 2004

01:00 PM

William A. Shaw

Prothonotary/Clerk of Courts

2 CERT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants/Respondents

\* No. 2003-1895-CD

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants/Respondents

\*

\* No. 2003-1895-CD

\*

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\* TYPE OF CASE: Civil Action

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\* TYPE OF PLEADING: Motion to

\* Dissolve Preliminary Injunction

\*

\* FILED ON BEHALF OF:

\* DEFENDANTS

\*

\* ATTORNEY FOR DEFENDANTS:

\* David C. Mason, Esquire

\* Supreme Court ID #39180

\* DAVID C. MASON LAW OFFICE

\* P.O. Box 28

\* Philipsburg, PA 16866

\* (814) 342-2240

\*

\* ATTORNEY FOR PLAINTIFF:

\* John R. Carfley, Esquire

\* Supreme Court ID #17621

\* P. O. Box 249

\* Philipsburg, PA 16866

\* (814) 342-5581

FILED

JAN 13 2004

01/13/04/2004

William A. Shaw

Prothonotary/Clerk of Courts

3 cent to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY	*
Plaintiff/Petitioner	* * *
vs.	* * *
ERIC O. GILLILAND and BERNADETTE GILLILAND, his wife,	* * *
Defendants/Respondents	*

**MOTION TO DISSOLVE PRELIMINARY INJUNCTION**

**AND NOW** come the Movants, Defendants above named, and move for the Dissolution of an *ex parte* Preliminary Injunction issued by this Court in the above captioned action on December 31, 2003, and in support of their Motion to Dissolve Preliminary Injunction, aver as follows:

1. Movants are Eric O. Gilliland and Bernadette Gilliland, his wife, defendants in the above matter represented by David C. Mason, Esquire, Mason Law Office, 409 N. Front Street, P.O. Box 28, Philipsburg, Pennsylvania, 16866. Defendants are the owners of contiguous tracts of land in Woodward and Gulich Townships, Clearfield County, PA, one or more of which tracts being adjacent to that parcel of land owned by the Plaintiff and identified in the Plaintiff's Complaint.

2. Respondent is the Houtzdale Municipal Authority which, upon information and belief is a body corporate and politic organized under the Municipal Authorities Act of 1945, as amended. Respondent is the Plaintiff in an action in which this court entered a

preliminary injunction without notice to the Defendants.

3. Plaintiffs filed an action in Equity on December 31, 2004, and this Court entered an *ex parte* Preliminary Injunction on the same date without hearing and without notice to the Defendants.

4. The action in equity filed by the Plaintiff and the Motion for Injunctive Relief both seek the right to use the lands of Defendants for travel to and from what Plaintiff admits is currently only a timbering operation. The basis for the Plaintiff's claimed right to use the property of the Defendants without compensation is an easement by prescription, an easement by implication, or an easement by necessity. Plaintiff has no express written right to travel over, upon and through the lands of the Defendants. Proof of any of the theories asserted by the Plaintiff to establish its right to use the lands of the Defendants is far from the standard of "clear and free from doubt" which controls the Court's issuance of a preliminary injunction, let alone an emergency *ex parte* injunction. *Canon Bros. Inc. v. D'Augostino*, 514 A.2d 614, 356 Pa. Super. 286 (1986).

5. The Pennsylvania Rules of Civil Procedure permit the issuance of injunctive relief before the matter is fully and finally determined, but is considered an extraordinary remedy used only when there is an urgent necessity for relief to prevent "immediate and irreparable injury" to the Plaintiff. *Soja v. Factoryville Sportsmen's Club*, 522 A.2d 1129, 361 Pa. Super. 473 (1987). The issuance of such an injunction *without notice* to the Defendants and without giving the Defendants an opportunity to be heard is an even more extraordinary remedy, to be used by the court only after a clear and convincing showing by the Plaintiff that there exists the need for unusual haste so that a clear right may be protected from immediate and irreparable injury. *Soja v. Factoryville Sportsmen's Club*,

*supra*. These rules may be found in Pa. R. C. P. 1531, wherein it is provided:

**"(a) A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or hearing held, in which case a court may issue a preliminary or special injunction without a hearing or notice."**

6. Plaintiff's Motion for Injunctive Relief asserts, curiously, that "*Defendants* will not suffer any appreciable or irreparable injury if the preliminary injunction is issued...." Paragraph 39. Such is not the standard of proof in the issuance of a preliminary injunction, and certainly more proof of harm is required before an *ex parte* injunction can be issued. Plaintiff's motion does not aver or assert any "...immediate and irreparable injury [to] be sustained [by Plaintiff] before notice can be given or a hearing held". Pa. R. C. P. 1531(a). Defendants aver that Plaintiff did not assert the existence of the immediacy and irreparability of any harm it would suffer because it has an existing access for the removal of the timber that it is harvesting from its premises, and no water is provided by the premises served by the alleged right-of-way.

7. The absence of the likely injury to the Defendants is not the standard for this court to issue an *ex parte* preliminary injunction against Defendants who have had no notice or opportunity to be heard. Rather, the rules of court and the decisional authority of the Commonwealth require that the Plaintiff prove to the satisfaction of the court that the Plaintiff will suffer "immediate and irreparable injury...before notice can be given or a hearing held" if the injunction is not issued. The level of proof required to be presented by the Plaintiff before a court may issue an *ex parte* preliminary injunction is that Plaintiff's right should be "clear and free from doubt". *Soja v. Factoryville Sportsmen's Club*,

*supra*. All doubtful questions are resolved against the issuance of the preliminary injunction. *McKinney v. Pennsylvania Railroad Co.*, 70 A. 946, 222 Pa. 48 (1908).

8. Despite Plaintiff's lengthy affirmations regarding the delivery of water service, etc., there is no water service issue related to the issuance of this injunction. No water is currently being delivered from the "well field" through pipelines across the lands of the Defendants. No water service would be interrupted by any alleged actions of the Defendants before a hearing could be held, and even before the Plaintiff's complaint can be heard on the merits. No customers of the Houtzdale Municipal Water Authority would be negatively impacted by the dissolution of the injunction and denial of the Plaintiff's prayer for relief. Before water service could be connected to the "well field" on the parcel of land, governmental approvals of the source of the drinking water supply would have to be secured, financing arrangements would have to be completed, pumping stations would need constructed, water line easements must be condemned, and ***four (4) miles*** of water line would need to be constructed.

9. Although the Plaintiff is deemed an instrumentality of the Commonwealth and therefore was not required to post a bond prior to the issuance of this *ex parte* preliminary injunction, if the court determines that the injunction was improvidently or impermissibly granted the Plaintiff is still responsible for the costs of the Defendants' defense of the injunction issued against them without notice.

**WHEREFORE**, Movant prays your Honorable Court for the entry of an Order dismissing the *ex parte* injunction granted in the instant matter on December 31, 2003, until hearing be held on Plaintiff's Motion for Injunctive Relief, and impose costs against the Plaintiff including damages for the existing trespass as well as legal fees and costs

associated with the unlawful, improper and illegal issuance of the *ex parte* preliminary injunction.

## COUNT II

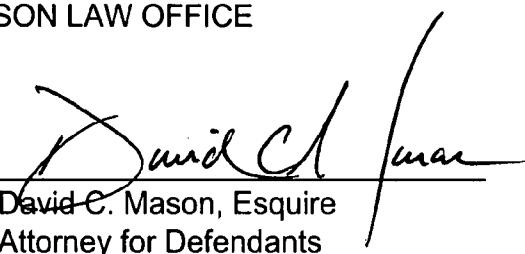
Paragraphs 1 through 9 are incorporated herein by reference as though fully set forth at length.

10. Pursuant to Pa. R.C.P. 1531(d) the injunction issued by the Court on December 31, 2003, has been dissolved as of midnight January 5, 2004.

**WHEREFORE**, Plaintiff prays your Honorable Court for the entry of an Order dissolving the *ex parte* injunction issued by this Court on December 31, 2003.

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Esquire  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

## CIVIL ACTION - LAW

## HOUTZDALE MUNICIPAL AUTHORITY

**Plaintiff/Petitioner**

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

### Defendants/Respondents

\*  
\* No. 2003-1895-CD

\* TYPE OF CASE: Civil Action

\* TYPE OF PLEADING: Certificate  
\* of Service

\* FILED ON BEHALF OF:  
\* DEFENDANTS

\* ATTORNEY FOR DEFENDANTS:

\* David C. Mason, Esquire  
\* Supreme Court ID #39180  
\* DAVID C. MASON LAW OFFICE  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240

\* ATTORNEY FOR PLAINTIFF:

\* John R. Carfley, Esquire  
\* Supreme Court ID #17621  
\* P. O. Box 249  
\* Philipsburg, PA 16866  
\* (814) 342-5581

FILED

JAN 13 2004

0/1:00/m

William A. Shaw

Prothonotary/Clerk of Courts

1 CENT TO ART

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

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\* No. 2003-1895-CD

Plaintiff/Petitioner

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**CERTIFICATE OF SERVICE**

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of DEFENDANTS' MOTION TO DISSOLVE PRELIMINARY INJUNCTION filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

John R. Carfley, Esquire  
P. O. Box 249  
Philipsburg, PA 16866

David Meholic, Court Administrator  
Clearfield County Courthouse, Suite 228  
230 E. Market Street  
Philipsburg, PA 16866

DATED: 1/12/2004

MASON LAW OFFICE

By:

David C. Mason, Esquire  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HOUTZDALE MUNICIPAL  
AUTHORITY

-vs-

No. 03-1895-CD

ERIC O. GILLILAND and  
BERNADETTE GILLILAND

O R D E R

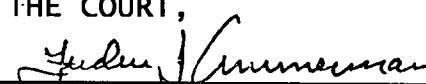
NOW, this 15th day of January, 2004, this being the preliminary date set for hearing on the Petition for Injunctive Relief relative the ex parte Order entered by this Court on December 31, 2003. The Court noting that due to counsel for both parties indicating that the hearing would take one (1) day to complete, that insufficient time is available, with the Court, this date, having scheduled one (1) hour. Therefore, it is the ORDER of this Court that the matter be rescheduled for Wednesday, February 11, 2004, at 9:00 a.m., Courtroom No. 1, Clearfield County Courthouse.

In the interim, the Court's Order of December 31, 2003, as attached to the Petition for Injunctive Relief filed on behalf of the Plaintiff, shall continue to be in effect.

**FILED**

JAN 19 2004

BY THE COURT,

  
\_\_\_\_\_  
President Judge

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

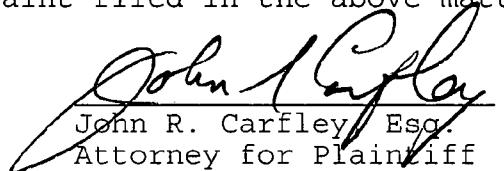
vs. : No. 2003-1895 CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :

PRAECIPE TO REINSTATE COMPLAINT

TO THE PROTHONOTARY:

PLEASE reinstate the complaint filed in the above matter.

  
John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: January 30, 2004

FILED

JAN 30 2004  
8:12:50 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

No. 2003-1895 CD

2 REINSTATE COMPLAINT  
TO ATTY

In The Court of Common Pleas of Clearfield County, Pennsylvania

HOUTZDALE MUNICIPAL AUTHORITY

VS.

GILLILAND, ERIC O. & BERNADETTE

COMPLAINT

Sheriff Docket # 15002

03-1895-CD

**SHERIFF RETURNS**

NOW JANUARY 7, 2004 WILLIAM WALTERS, SHERIFF OF HUNTINGDON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON ERIC O. GILLILAND and BERNADETTE GILLILAND, DEFENDANTS.

NOW JANUARY 14, 2004 ATTEMPTED TO SERVE THE WITHIN COMPLAINT ON ERIC O. GILLILAND and BERNADETTE GILLILAND, DEFENDANTS BY DEPUTIZING THE SHERIFF OF HUNTINGDON COUNTY. THE RETURN OF SHERIFF WALTERS IS HERETO ATTACHED AND MADE A PART OF THIS RETURN MARKED "NOT FOUND" DEFENDANTS MOVED TO: 548 HUNT CLUB DRIVE, GINTER, Pa. 16651.

NOW JANUARY 30, 2004 THE COMPLAINTS FOR ERIC O. GILLILAND and BERNADETTE GILLILAND, DEFENDANTS WERE RETURNED TO ATTORNEY CARFLEY AT HIS REQUEST.

---

Return Costs

Cost	Description
62.89	SHERIFF HAWKINS PAID BY: ATTY CK# 572
20.00	SURCHARGE PAID BY: ATTY Ck# 576
37.64	HUNTINGDON CO. SHFF. PAID BY: ATTY CK# 573

---

Sworn to Before Me This  
2nd Day Of Feb 2004  
William A. Shaw

So Answers,

*Chester A. Hawkins  
by Marilyn Harms*  
Chester A. Hawkins  
Sheriff

**FILED**

FEB 02 2004

William A. Shaw  
Prothonotary



# SHERIFF'S OFFICE

## HUNTINGDON COUNTY, PENNSYLVANIA

15002

241 Mifflin Street  
Huntingdon, PA 16652

Telephone: 814-643-0880  
William G. Walters, Sheriff

Houtzdale Municipal Authority

No. 1895-CD

Term: 2003

Vs.

Eric O. Gilliland and Bernadette Gilliland

Now, this 14th day of January, 2004, I am unable to locate the within named defendant, Eric O. Gilliland and Bernadette Gilliland, within my bailiwick, return this Notice and Complaint "NOT FOUND." Reason unable to serve: Defendants moved to the following address: 548 Hunt Club Drive, Ginter, PA 16651

So Answers,

*William G. Walters*

William G. Walters, Sheriff

*Daniel B. McCartney*  
Deputy Daniel B. McCartney, Jr.

Chief Deputy/Deputy

Costs:

Rec. & Doc.	\$9.00
Return Not Found	\$5.00
Mileage/Postage	\$20.64
Surcharge	---
Affidavit	\$3.00
Miscellaneous	---
<b>Total Costs</b>	<b>\$37.64 Paid</b>

Sworn and subscribed to  
before me this 16<sup>th</sup>  
day of January  
2004, A.D.

*Tammy S. Coons*  
Tammy S. Coons  
Prothonotary Notary Public

Notarial Seal  
Tammy S. Coons, Notary Public  
Huntingdon Boro, Huntingdon County  
My Commission Expires Oct. 21, 2006  
Member, Pennsylvania Association of Notaries

15002  
Walters, Sheriff  
Huntingdon County  
Pennsylvania

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

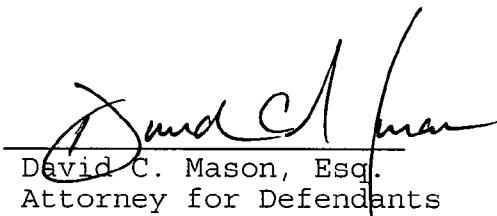
HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
Defendants

ACCEPTANCE OF SERVICE

On this 6<sup>TH</sup> day of February 2004, I hereby accept service on  
behalf of Defendants, Eric O. Gilliland and Bernadette Gilliland,  
of a certified copy of a Complaint filed in the above matter on  
December 31, 2004 and reinstated on January 30, 2004.

  
\_\_\_\_\_  
David C. Mason, Esq.  
Attorney for Defendants

FILED

FEB 11 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HOUTZDALE MUNICIPAL  
AUTHORITY

-VS-

No. 03-1895-CD

ERIC O. GILLILAND and  
BERNADETTE GILLILAND

O R D E R

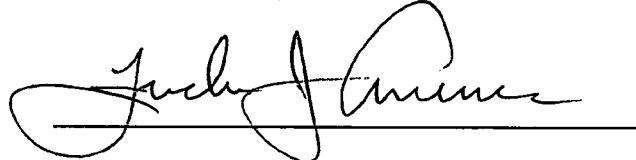
NOW, this 11th day of February, 2004, this being the date set for hearing on the Petition for Injunctive Relief; the parties have agreed to the entry of a Consent Order, the terms and conditions of which are as follows:

1. The preliminary injunction previously issued by the Court is dissolved;
2. The Defendants have agreed to permit entry onto the premises which are the subject of this action for timbering operations, said permission to expire thirty (30) days from this date, or Friday, March 12, 2004. Defendants reserve the right to seek compensation from the Plaintiff for this privilege should Defendants prevail in the underlying equity action;
3. The parties agree and recognize that Plaintiff, its consultants, employees, agents, and other governmental authorities acting in pursuit of the development of the Moshannon Creek Watershed well field may

continue to access the premises of the Defendants, pursuant to Section 409 of the Eminent Domain Code;

4. Access pursuant to Section 409 of the Eminent Domain Code shall, in no way, predetermine Plaintiffs' right to seek ownership of the roadway through civil means as opposed to acquiring ownership to the property by the filing of a Declaration of Taking under Section 401 et. seq. of the Eminent Domain Code.

BY THE COURT,



President Judge

**FILED**

FEB 11 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY

vs.

No. 03-1895-CD

ERIC O. GILLILAND and BERNADETTE  
GILLILAND

ORDER

AND NOW, this 1st day of March, 2004, it is the ORDER of the Court that Pre-Trial Conference in the above matter has been scheduled for Thursday, May 27, 2004 at 9:00 A.M., and a one (1) day trial has been scheduled for Wednesday, June 9, 2004 at 9:00 A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
\_\_\_\_\_  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

MAR 01 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff :  
  
vs. : No. 2003-1895-CD  
  
ERIC O. GILLILAND and BERNADETTE : Document filed:  
GILLILAND, his wife, : AMENDED COMPLAINT  
Defendants :  
  
: Filed on behalf of:  
Plaintiff :  
  
: Counsel for this Party:  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581  
ID# 17621

**FILED**

**MAR 17 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff :  
  
vs. : No. 2003-1895-CD  
  
ERIC O. GILLILAND and BERNADETTE : Document filed:  
GILLILAND, his wife, : AMENDED COMPLAINT  
Defendants :  
  
: Filed on behalf of:  
Plaintiff :  
  
: Counsel for this Party:  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581  
ID# 17621

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
vs.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
COURTHOUSE  
CLEARFIELD, PA. 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
Plaintiff

AMENDED COMPLAINT

AND NOW comes the plaintiff, Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Amended Complaint and in support thereof avers as follow:

1. The plaintiff is the Houtzdale Municipal Authority, (hereinafter HMA), a municipal authority organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located in Houtzdale, Clearfield County, Pennsylvania.

2. The defendants are Eric O. Gilliland and Bernadette Gilliland, his wife, of 1705 Dry Hollow Road, Warriors Mark, Pennsylvania.

3. The defendants are the owners of certain properties situate, lying and being in Gulich Township and Woodward Township, being more particularly identified in that document entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument Number 200105981, a true and correct copy of which is attached hereto as Exhibit A.

4. The particular properties at issue in this action are those parcels identified as bearing Tax Map Number 118-L16-000-00172 and Number 118-L16-000-00136 as more fully depicted on the

retracement map prepared by Unitec Consulting Engineers, Inc. and attached hereto as Exhibit B.

5. The plaintiff herein is the owner of real property in Gulich Township situate and lying adjacent to Defendants' property identified as Tax Parcel Number L16-172 which parcel was acquired by HMA by deed entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Volume 485, Page 372; said property currently bears Clearfield County Assessment Number 118-L17-22. A true and correct copy of said deed is attached hereto as Exhibit C.

6. The abstract of title for the Plaintiff's property which is referred to as the Robert Henderson tract, is more fully outlined in that deed hereinabove identified and attached hereto as Exhibit C.

7. Both the Plaintiff's and Defendant's chain of title contain references to the Plaintiff's acquisition of a water line right of way crossing Defendants' properties which right of way is recorded in both Clearfield and Centre Counties in those documents indexed in Miscellaneous Book 50, Page 113 (Clearfield County) and Miscellaneous Book 28, Page 320 (Centre County) respectively, which documents are attached hereto as Exhibits D and E.

8. HMA has maintained a water allocation permit for the Moshannon Creek which permit was originally granted by the Commonwealth of Pennsylvania, Department of Forests and Waters, Water and Power Resources Board, now the Department of Environmental Protection (hereinafter DEP) in that area depicted on

the map affixed hereto as Exhibit B; said permit was extended by the DEP when the Authority developed its original well field and surface source at Mountain Branch watershed and constructed its water treatment facility in Woodward Township, Clearfield County, Pennsylvania, in or about the year 1995.

9. Evidence of the original acquisition and use of the water allocation permit for the Moshannon Creek area from 1912 to the present is depicted on that series of documents affixed hereto as Plaintiff's Exhibit F, which documents also contain evidence of the date on which the appropriation and taking of the water source and, by inference, the roadway to access the Moshannon Creek occurred.

10. Through its engineering firm, the Authority recently completed a feasibility study which was approved by the DEP to develop a well field and surface water source in the Moshannon Creek Watershed to supplement its water supply and to provide a quantitative and qualitative increase in the water available for transmission through its system. Said feasibility study was commenced by Unitec Engineering pursuant to a Consent Order and Decree entered into by DEP and HMA in August of 1999, a true and correct copy of said Agreement and Consent Order being affixed hereto as Exhibit G.

11. It is believed and therefore averred that the said roadway which provides access to the Moshannon Creek wellfield has continued in existence and has been utilized by the general public and by HMA as well as by other public and private corporations, individuals, agents, employees, and representatives, from as early

as 1912 to the present date and is depicted on aerial photography dating from the 1950's and is locatable on more modern photography flown in the mid to late 1990's.

12. Commencing sometime between the years 1912 and 1920, Plaintiff and Defendant's predecessors in title commenced the joint use of the said roadway and, in fact, Plaintiff as recently as 2003 without interference from the Defendant, accessed the roadway as a means of ingress and egress to lands owned by the plaintiff adjacent to Moshannon Creek (the Robert Henderson Tract).

13. The current unilateral action of the defendants in attempting to usurp the ownership of the roadway is without legal basis or color of title and is prejudicial to all customers of HMA as well as the general public.

14. Subsequent to the acquisition of those properties now owned by the defendant, defendant without the permission and consent of the plaintiff and/or any other members of the public which had in the past enjoyed free passage over the said roadway, constructed a gate on Tax Parcel L16-136 and secured said gate with a chain and lock to which they initially provided keys to the plaintiff in order to allow access to the various properties by means of the existing roadway.

15. The plaintiff as part of its municipal mandate has constructed a water line over and across the property owned by the plaintiff and property owned by the defendants and/or their predecessors in title and when so doing to the best of Plaintiff's knowledge, information and belief secured easements for a roadway

to access said water line and the water source serviced by the pipeline either by unrecorded instruments of conveyance, by condemnation and/or by past usage for a period in excess of 21 years.

16. At all times relevant hereto and continuing for a period in excess of 21 years the said plaintiff has utilized the existing roadway for purposes of accessing its landholdings in the area of the Moshannon Creek as well as to provide access to the existing pipeline and related facilities depicted herein which facilities include but are not limited to a chlorination plant located near the gate which was constructed by the defendants long after the placement of the chlorination building.

17. Notwithstanding Plaintiff's past history which included the construction of the water line and the utilization of the existing roadway, defendants have now unilaterally prohibited access to, and use of the roadway by all members of the general public and HMA officials and have prevented free access over and across the roadway to the plaintiff, its employees, supervisors, agents and assignees.

18. Plaintiff believes and therefore avers that HMA and the public at large, has acquired an easement over and across the said existing roadway by prescription through the development of the areas in question which usage has continued for a period in excess of 21 years as required by statute.

19. Plaintiff has filed this complaint to seek either ownership or a license for usage of the subject roadway without

interference by the Defendants who have now illegally occupied, and have misappropriated the roadway which was previously utilized concurrently by the plaintiff, the Defendant and the general public; its further purpose in this action is to insure Plaintiff's right to develop the property owned by the plaintiff to further the best interest and welfare of the general public since this land is now part of a comprehensive program to develop a well field to qualitatively and quantitatively enhance the water resources of the Authority.

20. HMA, as a duly constituted municipal corporation under the Municipalities Authorities Act is charged with the responsibility of protecting the health, safety and welfare of the general public and included within that mandate is the right and duty to expand qualitatively and quanitatively the water resources available to it and to acquire rights of way and/or other means of access to its water supply for purposes of acquiring, treating and resupplying this water resource to members of the public which form its customer base.

21. Defendants' flagrant disregard of Plaintiff's and the public's ownership rights in this roadway is evidenced by their action in prohibiting public access to the roadway commencing on or about December 1, 2003.

22. The roadway under consideration has been utilized by members of the general public and by HMA for decades said use dating back to the early 1900's.

23. Said roadway as noted appears on aerial photographs and

on all typographic maps depicting rights of way through and across the defendants' property to the Moshannon Creek.

24. Without access over the said roadway plaintiff would be unable to place into service the production wells already drilled at a substantial cost to the Authority.

25. These actions of the defendants are arbitrary, capricious, and without regard to the legal rights of the members of the general public as a class and/or the water authority which is mandated by the Commonwealth of Pennsylvania to provide water of such a quality and quantity as to insure that the customer base in the Moshannon Valley area has a reasonable and potable supply of drinking water.

COUNT I ACQUISITION OF RIGHT OF WAY

BASED ON THE THEORY OF EASEMENT BY PRESCRIPTION

26. Plaintiff incorporates by reference Paragraphs 1 through 25 of this amended complaint as fully as though set forth at length.

27. It is believed and therefore averred that this particular roadway, in addition to having been continually used by HMA and/or its predecessors, has been used by members of the general public to secure access to streams and springs as well as hunting areas both on the State Game Lands and on other properties owned by individuals who permit access to sportsmen so that private and public rights in the roadway have been acquired which would prevent the defendant from unilaterally extinguishing or prohibiting the usage of the right of way at this time.

28. It is believed and therefore averred that in addition to members of the general public there are other organizations which utilized this roadway for purposes of accessing state game lands and other hunting and fishing protectorates some of which represent governmental agencies and some of which are private entities seeking to protect the environment including but not limited to the DEP, Commonwealth of Pennsylvania, Pennsylvania Fish & Boat Commission (hereinafter PFBC) and the members of the Pennsylvania Environmental Defense Foundation (hereinafter PEDF).

29. It is believed and therefore averred that in this particular instance plaintiff, sportsmen, as well as other members of the general public and those other organizations named herein have utilized this right of way and/or easement for a period in excess of twenty-one (21) years.

30. The theory under which this claim of title is said to have vested in the plaintiff is an easement by prescription which vests title to land acquired by adverse possession for a period of twenty-one (21) years which theory of law requires that the use be continuous, open, visible, notorious, hostile and adverse in order to give rise to said rights.

31. It is believed and therefore averred that the general public as well as HMA through its employees, agents and officials took possession of and utilized the subject roadway based upon a declaration and appropriation through a resolution enacted by the corporate officers of the Ramey Water Company in 1912 and formalized by a document dated March 15, 1938, said documents being

attached hereto and previously identified as Exhibit F.

32. Plaintiff now states that the said occupancy and use of the Creek and the accessway before and after said taking was based upon usage which was continuous, open, visible, notorious, hostile and adverse to all parties including the lawful owner thereof so as to give rise to the presumption that the said right of way was acquired by prescription.

WHEREFORE, Plaintiff requests this Honorable Court to enter an order declaring that the plaintiff has acquired an easement by prescription and may utilize the said right of way consistent with this ownership interest.

COUNTY II ACQUISITION OF RIGHT OF WAY

BY CONDEMNATION UNDER THE EMINENT DOMAIN CODE

26 P.S. §1-401 ET. SEQ.

33. Plaintiff incorporates by reference Paragraphs 1 through 32 of this amended complaint as fully as though set forth at length.

34. It is believed and therefore averred that any entity which has the power of eminent domain other than the Commonwealth of Pennsylvania or the United States of America is presumed to have taken possession of any property right it needs or requires and in so doing will acquire that property right by virtue of its right or power of eminent domain even if that entity was unable to acquire title to the property rights or other interest by adverse possession; furthermore it is presumed that said taking occurs with the initial entry of the governmental entity upon the property for

purposes consistent with its governmental mandate and authority.

35. When a municipal body such as the Plaintiff herein, having the power of eminent domain, enters upon private lands of another and uses the land or an interest therein for its own purposes, the law presumes that it does so under its right of eminent domain.

36. Evidence of the appropriation, acquisition and taking of the Moshannon Creek water source as well as the necessary authority recited in the resolution to secure by "purchase and lease from the riparian owners the necessary lands, rights of way, release of damages, etc." as well as the proof of the actual appropriation and taking from the Moshannon Creek is contained in and confirmed by the statement of the Ramey Water Company of June 11, 1912, a true and correct copy of said statement being sworn to and affirmed by the corporate officers of the company on March 15, 1938. True and correct copies of these records are attached hereto and previously identified as Exhibit F.

37. It is believed and therefore averred that said documents constitute *prima facie* evidence of the taking of the water source and the requisite easements to access the source as of that date.

38. It is believed and therefore averred that the initial occupancy and use of this roadway by HMA's predecessor in title, the Ramey Water Co, commenced sometime between 1912 and 1920 and acted as a condemnation of rights in and to the roadway as it was then presently constituted which right of way was recognized and extended by continued usage over the past eighty years subject only

to defendant's ownership and concurrent use of the said roadway consistent with the rights of the Plaintiff and other entities named herein.

39. In the instant case the right of way and the rights acquired by the taking does not divest the current owners of their legal rights but rather vests in the Plaintiff a right to use the roadway for purposes of access to the existing wellfield.

40. It is therefore averred that this action by the Authority does not constitute a taking of property rights permitting a monetary recovery of damages since the defendant continues to own the right of way, in fee, subject only to Plaintiff's limited, conditional use earmarked by its ability to exercise its right of ingress and egress to and from the Moshannon Creek wellfield; it is believed and therefore averred that should the roadway be abandoned by the Authority after condemnation the Eminent Domain Code, would require that ownership of the roadway would revert to the landowner.

41. It is further believed and therefore that the taking of the right of way in 1912 began the running of time on any claim which could have been asserted by the owners of the property, which right has now been waived and/or forfeited based upon the statute of limitations, the theory of equitable estoppel, waiver and/or laches and any other legal or equitable principles barring an individual from asserting or pursuing his legal or equitable rights in an untimely manner.

42. It is believed and therefore averred that the defendants

may continue to exercise certain rights to the said roadway subject to the right of the Authority to use said roadway based upon the acquisition of rights by the taking of these premises by entry upon the said roadway at or about the time of the construction of the water pipeline between 1912 and 1920 or thereafter as the record so indicates.

43. It is believed and therefore averred that the defendants and/or their predecessors in title had actual notice of the condemnation or taking of the roadway by virtue of the utilization of the roadway by members of the general public, by members of the DEP, PFBC and by members of HMA and/or its predecessor and that said notice, therefore, prohibits the present owner's right of recovery for the condemnation of the right of way based upon actual and/or constructive notice of the right of way and the Defendant's failure to take action to protect their right of recovery.

44. When an easement or lesser interest in land is taken to wit: a right of way or less than a condemnation in fee it is axiomatic that the owner of the land can continue to use the land as long as his use is not inconsistent with the easement condemned thus reducing the overall value of the interest subject to the condemnation.

WHEREFORE, plaintiff demands that judgment be entered in favor of the Plaintiff and against the Defendants determining legal ownership over the said twelve (12') foot access highway as depicted on the map affixed to this complaint with further

directives to the defendants and all similarly situated individuals to cease and desist from any activity in contravention of plaintiff's legal rights as a municipal authority seeking access to its landholdings in the area and from use of the said roadway together with the costs of this proceeding, and legal fees as warranted with interest thereon.

COUNT III - MONETARY DAMAGES FOR LEGAL FEES AND COSTS

45. Plaintiff incorporates by reference Paragraphs 1 through 44 of this Amended Complaint as fully as though set forth at length.

46. It is believed and therefore averred that the Defendant knew or should have known, based upon reasonable investigation, that the Plaintiff could exercise the right to access its property over and across the right of way acquired by the Plaintiff either through an easement by prescription and/or through the taking of the property by condemnation by Plaintiff's predecessor in title decades ago.

47. Rather than provide the said Authority with access to the roadway, Defendant contested Plaintiff's claim and/or right to utilize the said roadway and exercise a limited right of usage in the said roadway which compelled the Plaintiff to seek injunctive relief and to further seek clarification of the ownership rights of the Plaintiff in and to the said roadway.

48. The limited ownership rights asserted by the Plaintiff in and to the right of way is based upon established legal principles

easily discernable by the Defendants and/or their legal counsel had they taken the time to research these issues and is, therefore, a matter which should not have been made subject to an adverserial proceeding causing expense and delay to the Plaintiff and/or ultimately its customer base.

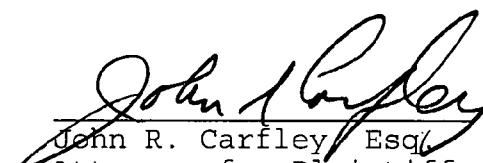
49. Notwithstanding these facts and the clarity of the legal principles surrounding Plaintiff's acquisition of title Defendants contested Plaintiff's legal rights in and to the said roadway causing Plaintiff to expend substantial sums of money in legal fees and costs associated with its claim.

50. As a result of the actions of the Defendants Plaintiff has incurred legal fees and costs in litigation to substantiate its rights in and to the said roadway all of which is more fully set forth in the averments and exhibits contained herein.

51. Those legal fees and costs are at present unliquidated but are expected to exceed \$10,000.00.

52. Plaintiff believes and therefore avers that Plaintiff is entitled to judgment for legal fees and costs or in the alternative for a set off of these expenses against the value of the right of way as may be determined by a Board of View or other judicial body should the said Board of View, a court or a jury determine that the said Defendants are entitled to compensation for the taking and/or condemnation of the premises at or about the time of the Authority's initial utilization of said property rights.

WHEREFORE, Plaintiff demands that judgment be entered in favor of Plaintiff and against the Defendants for legal fees and costs in an unliquidated sum in excess of Ten Thousand (\$10,000.00) Dollars associated with this proceeding or in the alternative that said fees and costs be applied as a set off to any compensation to which the Defendant might be entitled in any Board of View or in any other judicial proceeding to determine the fair market value of the right of way previously condemned.



John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: March 16, 2004

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

John W. Andrew

Dated: March 16, 2004

A

AFFIDAVIT No. 34056

**Know All Men By These Presents,**

That I, Chester A. Hawkins, High Sheriff of the County of Clearfield, in the State of Pennsylvania, for and in consideration of the sum of One Hundred Forty-Nine Thousand and (\$149,000.00) 00/100 Dollars plus costs, to me in hand paid, do hereby grant and convey to ERIC O. GILLILAND and BERNADETTE GILLILAND, husband and wife, the following described property to wit:

All those certain pieces or parcels of land situate, lying and being in Gulich Township and Woodward Township, Clearfield County, Pennsylvania. Consisting of combined 1,409.701 acres more or less. Identified as the following Clearfield County Tax Map Numbers and Control Numbers:

Tax Map Number	Control Number
118-L16-000-00172	1180-38384
118-L16-000-00181	1180-38385
118-L16-000-00136	1180-38383
118-L16-000-00176	1180-38388
118-M16-000-00010	1180-38362
118-M16-000-00003	1180-38391
118-M16-000-00009	1180-38363
118-M15-531-00027	1180-47133
118-M15-531-00016	1180-38365
118-M15-531-00020	1180-38375
118-M15-531-00021	1180-38372
118-M15-531-00018	1180-38373
118-M15-531-00017	1180-38377
118-M15-531-00019	1180-38374
118-M16-000-00002	1180-38390
130-M15-000-00005	1300-80377
118-M15-531-00025	1180-47131
118-M15-531-00026	1180-47132

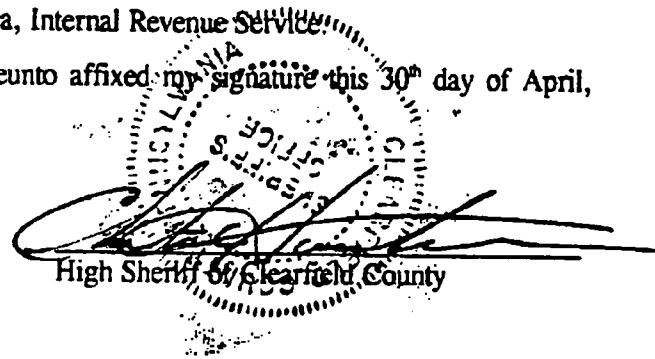
BEING part of the same premises conveyed to Power Land Co., Inc., by deed dated April 18, 1978, and entered for record in Clearfield County Deed Book Volume 758, Page 225. The said Power Land Co., Inc., having merged into Power Operating Co., Inc., by Certificate of Merger dated December 27, 1985, and recorded on January 4, 1986, in Clearfield County Deeds and Records Book 1086, Page 332.

SEIZED, taken in execution and sold as the property of POWER OPERATING CO., INC., a/k/a POWER LAND CO. a/k/a POWER LAND CO., INC. AND THE UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, at the suit of MANUFACTUREES AND TRADERS TRUST COMPANY (M & T), Successor in interest by merger to KEYSTONE FINANCIAL BANK, N.A., (KEYSTONE) Formerly known as MID-STATE BANK AND TRUST. JUDGEMENT NO. 00-1303-CD.



NOW, April 30, 2001, the same having been sold by me to the said Grantee on the 23<sup>rd</sup> day of March Anno Domini two thousand one and after due advertisement according to law, under and by virtue of a Writ of Execution issued on the 18<sup>th</sup> day of January Anno Domini two thousand and one out of the Court of Common Pleas of said County of Clearfield at Docket Number 00-1303-CD, at the suit of Manufacturers and Traders Trust Company (M & T) Successor in interest by merger to Keystone Financial Bank, N.A.. (Keystone) Formerly known as Mid-State Bank and Trust Company, against Power Land and Operating Co., Inc. a/k/a Power Land Co. a/k/a Power Land Co., Inc. and The United States of America, Internal Revenue Service.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 30<sup>th</sup> day of April, Anno Domini Two Thousand One.



High Sheriff of Clearfield County

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

On this the 30<sup>th</sup> day of April, 2001, before me a Prothonotary, the undersigned officer, personally appeared, Chester A. Hawkins, High Sheriff of Clearfield County, Pennsylvania known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity reinstated and for the purposes therein contained.

In witness whereof, I have hereunto set my hand and official seal.



\_\_\_\_\_  
Prothonotary

WILLIAM A. SHAW  
Prothonotary

My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

I hereby certify that the precise residence of the Grantee or Grantees is:

RD 1, Box 464A  
Warriors Mark, PA 16877



\_\_\_\_\_  
Sheriff of Clearfield County

KAREN L. STARCK  
REGISTER AND RECORDER  
CLEARFIELD COUNTY  
Pennsylvania

INSTRUMENT NUMBER

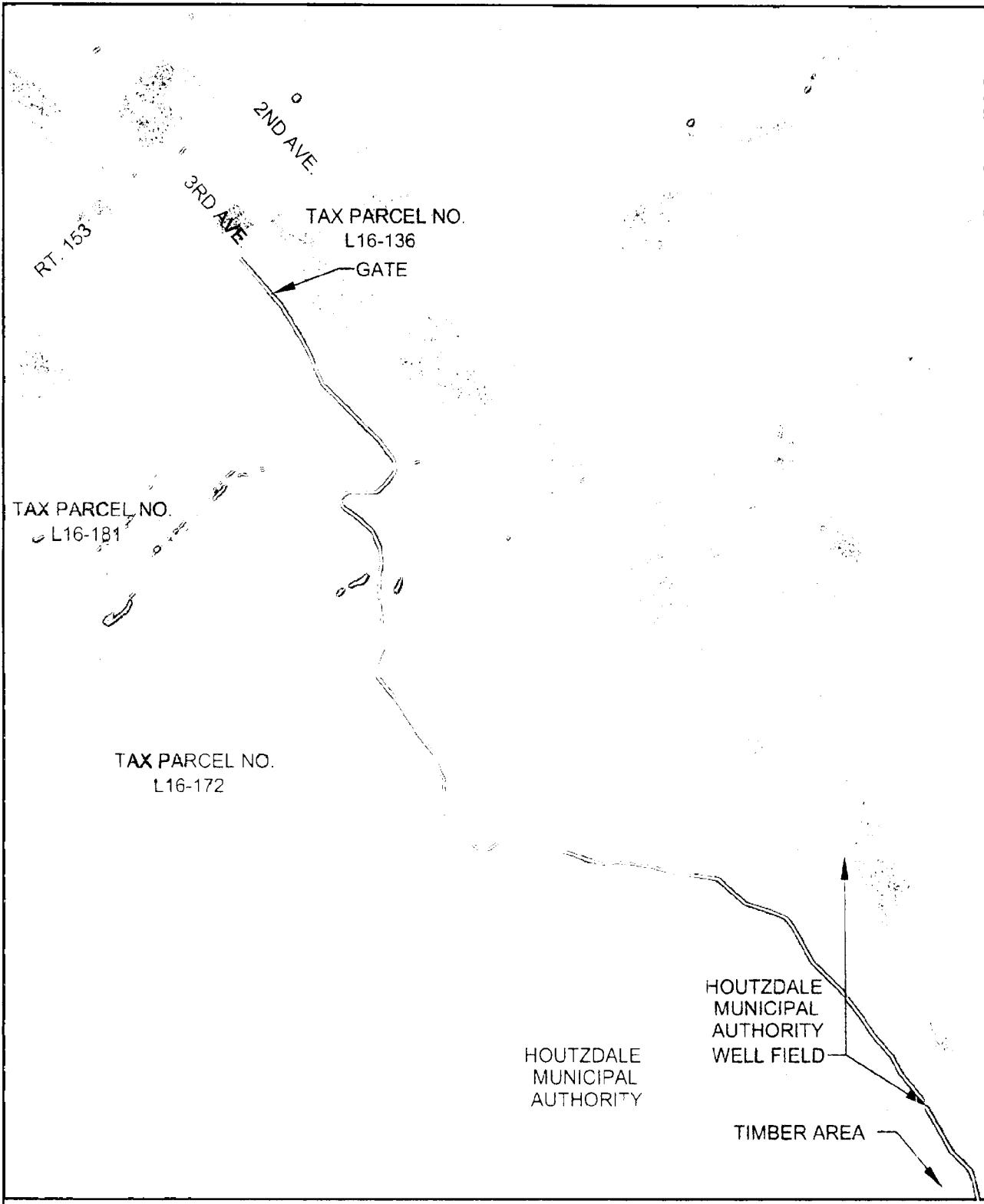
200105981

RECORDED ON

APR 30, 2001  
10:44:19 AM

RECORDING FEES -	\$16.00
RECORDER	\$1.00
IMPROVEMENT FUND	\$1.00
STATE TRANSFER	\$4,378.13
STATE WRIT TAX	\$0.50
JULICH TOWNSHIP	\$2,189.06
IOSHAKON	\$2,189.07
VALLEY SCHOOLS	
OTAL	\$8,774.76
CUSTOMER	
CLEARFIELD CO SHERIFF	

B



LEGEND

PROPERTY LINE  
EXISTING WATER LINE

PREEXISTING 12' GRAVEL ACCESS ROAD



Uni-Tec  
Consulting  
Engineers, Inc.

VENUE STATE COLLEGE, PA. 16801 (814) 238-8223

ACCESS TO  
HOUTZDALE MUNICIPAL AUTHORITY  
MOSHANNON CREEK WELLS AND  
TIMBERING

SCALE  
1"=1000'  
DRAWING NO.  
018100000  
SHEET NO.  
1 OF 1

EXHIBIT

B

C

D E E D

MADE this 16<sup>th</sup> day of September, 1960, by and between RAMEY WATER COMPANY, a Pennsylvania Corporation, with principal office and place of business in the Borough of Ramey, Clearfield County, Pennsylvania, party of the first part, hereinafter called Grantor.

N  
D

HOUTZDALE MUNICIPAL AUTHORITY, a body corporate and politic, organized and existing under the laws of the State of Pennsylvania with principal office and place of business in the Borough of Houtzdale, Clearfield County, Pennsylvania, party of the second part, hereinafter called Grantee.

W I T N E S S E T H

That in consideration of One (\$1.00) Dollar, in hand paid the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantee, all franchises and all property, real, personal and mixed, of the Grantor, wheresoever situate and in whatsoever nature, whether specifically enumerated herein or not, it being the intent of the Grantor to vest in the Grantee all interests in real estate now owned by the Grantor, including but not limited to all those certain pieces or parcels of land situate in Gulich Township, Clearfield County, Pennsylvania and situate in the Borough of Ramey, Clearfield County, Pennsylvania bounded and described as follows:

PREMISES LOCATED IN GULICH TOWNSHIP

THE FIRST THEREOF BEGINNING at a point in the eastern line of the Township Road, now State Highway Route No. 353, leading from the Village of Ginter to the Village of Viola in said Township, and seventeen (17) feet from the southwestern corner of the large lot of land of which the herein described land is a part; thence in a northerly direction by the eastern line of said Township Road thirty (30) feet to a point; thence in a easterly direction and at right angles to the line of said Township

EXHIBIT

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Road twenty (20) feet to a point, thence in a southerly direction in a line parallel with said Township Road thirty (30) feet to a point, thence in a westerly direction twenty (20) feet to a point in line of the Township Road and place of beginning.

Being the same premises conveyed to the Grantor by deed of William Srock, dated February 1, 1939, and recorded in Deed Book 325, Page 92.

THE SECOND THEREOF: Being part of the residue of a tract of land warranted in the name of Magnus Miller, one part thereof comprising about 200 acres of land in the name of Caroline Nevling, for which a patent was issued to Caroline Nevling. The remainder being a residue of Magnus Miller Tract which vested in Thomas Nevling deceased, and being bounded by lands of The Kittanning Coal Company, Robert Henderson Tract, John Loeke, Ebenezer Nutter, D. Fulkerson Estate and A.G. Fox, et al., and being further situation along the right bank of Moshannon Creek and the Tyrone and Janesville Road traversing said land.

Being the same premises conveyed to the Grantor herein by deed of Harold Boulton et ux, dated July 21, 1927, and recorded in Deed Book 283, Page 353.

THE THIRD THEREOF: Being a piece of land and portion of the Magnus Miller Survey known as the Robert Henderson Tract, containing 170 acres, more or less, lying on the north and west side of Moshannon Creek.

THE FOURTH THEREOF: Being all the tract of land situate in Gulich Township, containing 530 acres, more or less, situate on the north and west side of Moshannon Creek, aforesaid to John A. Loeke and being part of tracts of land surveyed on Warrant of E.C. Nutter and J.B. Davis survey being returned on each warrant the 16th day of July, 1872.

The foregoing two tracts being the same premises conveyed to the Grantor herein by deed of Harold Boulton et al, dated December 17, 1912, and recorded in Deed Book 204, Page 582.

#### PREMISES LOCATED IN RAMEY BOROUGH

THE FIRST THEREOF: BEGINNING at a post in line of D.K. Ramey, thence along the line of T.C. Heims south 51 degrees 50 minutes west 109.1 perches to a post, thence south along the line of land of John Beyer 39 degrees 30 minutes east 37.7 perches to a post, thence north along line of land of John Beyer 52 degrees 15 minutes east 49.8 perches to a post, thence north along the line of alley 69 degrees 3 minutes east 44.6 perches to a post, thence north along line of land of John Beyer 35 degrees 30 minutes east 16.3 perches to a post, thence north along line of lands of D.K. Ramey 33 degrees 15 minutes west 42.2 perches to a post and the place of beginning. Containing 25 acres, 33.6 perches.

IN WITNESS WHEREOF, said Grantor has caused these presents to be executed by its proper officers, and its corporate seal, duly attested, to be hereunto affixed the day and year first above written.

ATTEST:

Secretary

RAMEY WATER COMPANY

BY

President

STATE OF PENNSYLVANIA  
SS  
COUNTY OF CLEARFIELD

On this 21 day of September, 1960, before me, the undersigned officer personally appeared who acknowledged himself to be the President of RAMEY WATER COMPANY, a corporation, and as such, being duly authorized to do so, executed the foregoing Deed by signing the name of the corporation by himself as President for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC  
My Commission Expires  
JANUARY 7, 1963

I hereby certify the precise address of the within  
Grantee is Houtzdale, Penn.



Amendment No. 5693

RECORDED ON RECORD Sep. 20 1960 12:50 pm DICK REED RECORDER

in the year 1940, said Company caused those presents  
executed by the proper officers, and its corporate seal,  
hereinafter to be heretounto affixed the day and year first aforesaid.

AMERICAN COMPANY

BY

W. H. L. President

CHARTERED

On this the 1<sup>st</sup> day of September, 1960, before me, the  
aforesigned officer, personally appeared

acknowledged himself to be the President of the  
aforesigned company, and duly authorized to  
execute the aforesigned charter. The name of the company  
is American Company, and the name of the aforesaid  
President for the purposes hereof is

W. H. L. President, in my hand and of me

acknowledged this 1<sup>st</sup> day of September, 1960, in the presence  
of the aforesigned officer, and the aforesigned  
President for the purposes hereof.

W. H. L. President

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the right, privilege and authority to construct, erect, operate, replace, renew, repair and periodically maintain a pole line with all necessary wires, cross arms, guy wires and other usual fixtures and appurtenances used or adopted for the transmission of electric current for light, heat and power or any other purpose, on the said street or highway known as the (or in my said lot described as follows) said line to run in an easterly direction from property line of J.E. McWhorter to the property line of H. H. Myers, Jr., Co.

Also the right, privilege and authority to cut or trim trees to the extent necessary to keep said line clear of the said line by at least fifteen (15) feet.

In case, however, any damage (other than tree damage) to the property of the landowner, caused by the said company in maintaining or repairing said electric equipment for the said line, shall be borne by said company, its successors and assigns.

In witness whereof, the parties hereto have duly executed this agreement this twentieth day of April, A.D. 1920.

IN WITNESS WHEREOF,

WILLIAM L. COLE (W.L. Cole)  
Alderman

By Commission Captain January 3, 1920  
of the City of Kittanning

THE COMPANY  
THE KITTANNING COAL CO., 1920  
State of Pennsylvania  
County of Fayette

LEWIS H. COLE (L.H. Cole)  
Alderman

By Commissioner  
Title of Job  
Fayette Co., Pa.

ACCORDING TO THE AGREEMENT  
Title of Job  
Fayette Co., Pa.

IN WITNESS WHEREOF, on April 19th, 1920, the undersigned, a Notary Public, doth acknowledge, personally appeared before him the above named, on Grant, Captain, a Notary Public, and in his presence, the said, signed the same in presence of the undersigned, and declared that same to be his free and voluntary act.

IN WITNESS WHEREOF, the parties hereto have executed this agreement,

WILLIAM L. COLE (W.L. Cole)

Notary Public

Alderman

By Captain, Captain, January 3, 1920

Dated on the day of April, 1920, S.Y.

Executed in the County of

State of Pennsylvania.



AGREEMENT ) Article of Agreement made and entered into this 2nd day of Jan'y.  
KITTANNING COAL CO. ) 1920 by and between The Kittanning Coal Company, a corporation  
TO ) organized and existing under the laws of the Commonwealth of  
RAMSEY WATER CO. ) Pennsylvania, party of the first part, and The Ramsey Water  
Company, a corporation organized and existing under the laws of Pennsylvania, party of the  
second part, as follows:

The party of the first part for and in consideration of the covenants and rental hereinafter set forth and reserved, and on the part of the party of the second part to be kept and paid, hath leased and by these presents doth lease unto the party of the second part, its successors and assigns, the right of way, in so far as it owns or controls the land,

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to lay, for the purpose of supplying water to the public, and maintain and use, a line of water pipe two feet or more beneath the surface of the ground, under and through the Christian Stake, Mathias Young, Christopher Hagar, tracts of land in Gulich Township, Clearfield County, Pennsylvania, and the Robert Henderson, Joseph Wells, tracts of land in Rush Township, Center County, as per the plan of proposed and hereby leased location for said water pipe line hereto annexed and made part of this agreement, together with the right so far as the party of the first part has any power or title in the premises to run branch lines of water pipe from said main pipe line location to reach the dwellings and improvements of the patrons of the party of the second part; and together with the right of ingress, egress, and regress along said pipe line, over a space or strip of land not exceeding six feet on each side of said pipe line for the purpose of laying, inspecting and repairing the same from time to time as may be necessary; and also the right to build at the termination of said right of way location on the Joseph Wells tract of land, the whole or part of a dam across the Moshannen Creek for the purpose of creating a reservoir, catch basin, or intake of water from the Moshannen Creek for said pipe line, and together with the right so far as the party of the first part has property and title to take water from said Moshannen Creek at the point aforesaid and by means of said pipe line for the supply of water to the public.

It is mutually agreed, however, by the parties hereto that if the rights hereby granted shall not be exercised for a period of one year or more by the party of the second part, its successors or assigns, then and in that event this grant shall be void and of no further effect, and the premises hereby granted shall revert to the party of the first part, its successors or assigns.

The party of the second part for itself, its successors and assigns, agrees to keep the surface of the ground of said strip of land in level condition and in good order.

The party of the second part for itself, its successors and assigns, does hereby release and discharge the party of the first part, its successors and assigns, from all claims, demands, payments of money, and right to compensation for or on account of any and all damages which have accrued or may accrue.

(a) By reason of mining and removing the coal, stone, fire clay, iron ore, oil and gas, in and under the said tracts of land proposed to be traversed by said water pipe lines.

(b) By reason of building dams, roads and railroads under and upon the surface of the said tracts of land.

(c) By reason of the subsidence of the surface of any part of said tracts of land.

(d) By reason of the springs and streams of water on or under the surface of the said tracts of land drying up or decreasing in volume for any reason, or being or becoming diverted from their present or their customary channels.

The said party of the second part hereby covenants and agrees that should at any time the pipe or pipes to be laid on said right of way become broken or disconnected by reason of which water may escape and run into the mine or mines of the party of the first part or its lessee, that the said party of the second part will use due diligence in repairing same and indemnify said party of the first part and its lessees for any damage that may be sustained by reason of said water entering upon or into the mine or mines aforesaid.

To have and to hold the said right of way and privilege to take water for and during such term as the party of the second part may actually use the same.

n consideration whereof the party of the second part agrees to pay to the party of first part the sum of Three Hundred Dollars per annum as rental for the said right of and privileges to take water from Moshannon Creek and the said rental to be paid in annually installments of One Hundred and Fifty Dollars each, on the 1st days of January and July in advance; for the purpose of rental payments, the term of this agreement be considered to begin on the first day of January, 1920, but the party of the second part may enter upon the lands covered by this agreement, for the purpose of laying its lines and reservoir, immediately.

In the event of failure to pay the rental reserved herein as often as the same becomes due it is agreed by and between the parties that the party of the first part may, immediately and without notice, disconnect the pipe lines of the party of the second part from the ke for water from the Moshannon Creek, and in any other way prevent the party of the second part from enjoying any rights or privileges under this agreement until said arrears are fully paid, but this remedy shall not exclude resort by the party of the first part to the collections of arrears of rent by legal process.

Both parties hereto hereby constitute and appoint Harry Boulton their, and each of their lawful attorney to acknowledge this instrument before a Notary Public, as their each of their act and deed with the intent that same may be recorded.

In Witness Whereof, the parties hereto have, pursuant to resolutions of each of their Board of Directors, caused their corporate seals to be hereto affixed attested by their proper officers.

THE KITTANNING COAL COMPANY

Jos. H. Burroughs

President

Attest: Electrum L. Townsend (Corp. seal)

Secretary

THE RUMNEY WATER COMPANY

Harry Boulton

President

Attest: L.W. Beyer (Corp. seal)

Secretary

State of Pennsylvania,)

County of Clearfield, ) SS

Before me, the subscriber, a Notary Public in and for the said County, personally appeared Harry Boulton, the attorney appointed in the foregoing instrument, who in due form of law acknowledged the said instrument to be the act and deed of The Kittanning Coal Company and the Rumney Water Company, with the intent that said instrument might be duly recorded.

Witness my hand and seal this 2nd day of January-1920

W.P. Harpster (off. seal) J.P.

My commission expires first Monday in January, 1924

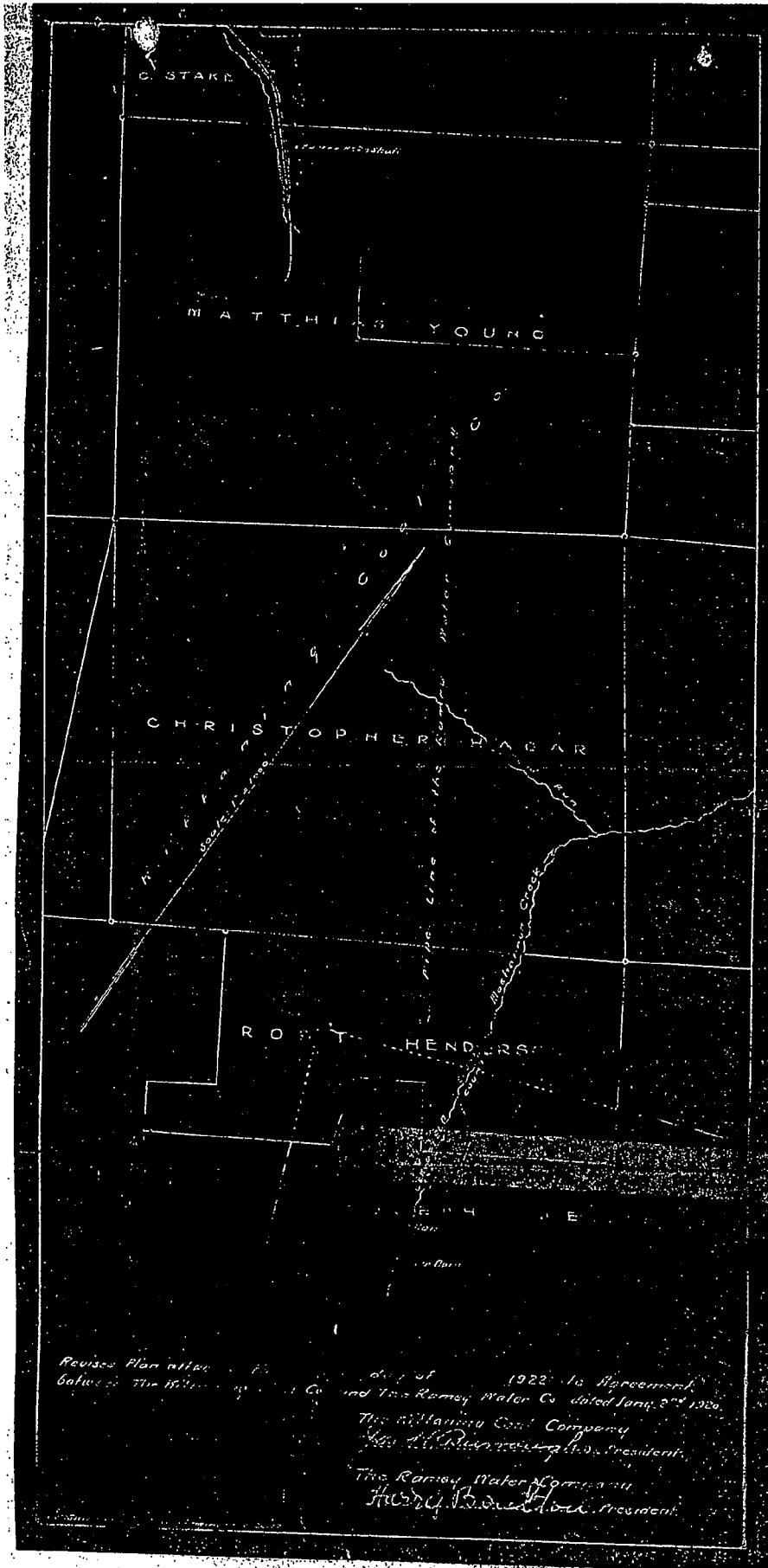
(Copy of Blueprint hereto attached)

Entered of Record Jun 21, 1937. 11-35 A.M.

Recorded and Compared by *L G Dan*

*M J*

Recorder.



Revised Plan after the 1st day of January 1922 to Agreement  
between the Illinois Coal Co. and The Ramsey Motor Co. dated January 2<sup>nd</sup> 1920  
The Illinois Coal Company  
John L. Danner, President  
The Ramsey Motor Company  
H. C. Bredenbach, President

Map

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trust and confidence in your prudence and integrity and ability, and under authority of the Constitution and Laws of the said Commonwealth, in such case made and provided I have nominated, and by and with the advise and consent of two thirds of all the Members of the Senate, have appointed and do by the present Commission you to be a Notary Public, for the Commonwealth of Pennsylvania, to reside in the Borough of State College, in the County aforesaid,

To have and to hold the said office, together with all rights, powers and emoluments thereunto belonging, or by law, in anywise appertaining, for the period of Four Years if you shall so long behave yourself well.

This appointment to compute from May 25, 1937.

Given under my hand and the great seal of the State at the City of Harrisburg, this twenty-fifth day of May in the year of our Lord one thousand nine hundred and thirty seven and of the Commonwealth the One Hundred and sixty-first.

By The Governor, George H. Earle,  
GREAT SEAL. David L. Lawrence, Secretary of the Commonwealth.

Entered and Recorded June 8th, 1937.

Recorder.

MS. 28/320

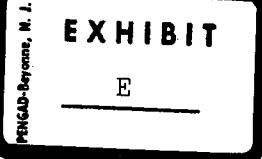
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AGREEMENT	ARTICLE of agreement made and entered
KITTANING COAL CO.	into this 2nd day of Jany 1920, by and between
and	The Kittanning Coal Company, a corporation orga-
RAMEY WATER COMPANY.	nized and existing under the laws of the Comm-
#####	onwealth of Pennsylvania, party of the first pa-
organized and existing under the laws of Pennsylvania, party of the second part, as	rt, and The Ramey Water Company, a corporation
follows,	organized and existing under the laws of Pennsylvania, party of the second part, as

The party of the first part for and in consideration of the covenants and rental hereinafter set forth and reserved, and on the part of the party of the second part to be kept and paid, hath leased and by these presents doth lease unto the party of the second part, its successors and assigns, the right of way, in so far as it owns or controls the land, to lay, for the purpose of supplying water to the public, and maintain and use, a line of water pipe two feet or more beneath the surface of the ground, under and through the Christian Stake, Mathias Young, Christopher Hagar, tracts, of land in Gulich Township, Clearfield County, Pennsylvania, and the Robert Henderson Joseph Wells, tracts of land in Rush Township, Centre County, as per the plan of proposed and hereby leased location for said water pipe hereto annexed and made part of

EXHIBIT

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this agreement, together with the right so far as the party of the first part has any power or title in the premises to run branch lines of water pipe from said main pipe line location to reach the dwellings and improvements of the patrons of the party of the second part; and together with the right of ingress, egress, and regress along said pipe line, over a space or strip of land not exceeding six feet on each side of said pipe line for the purpose of laying, inspecting, and repairing the same from time to time as may be necessary; and also the right to build at the termination of said right of way location on the Joseph Wells tract of land, the whole or part of a dam across the Moshannon Creek for the purpose of creating a reservoir, catch basin or intake of water from Moshannon Creek for said pipe line, and together with the right so far as the party of the first part has property and title to take water from said Moshannon Creek at the point aforesaid and by means of said pipeline for the supply of water to the public.

It is mutually agreed however, by the parties hereto that if the rights hereby granted shall not be exercised for a period of one year or more by the party of the second part, its successors or assigns, then within that event this grant shall be void and no further effect, and the premises hereby granted shall revert to the party of the first part, its successors or assigns.

The party of the second part for itself, its successors and assigns, agree to keep the surface of the ground of said strip of land in level condition and in good order.

The party of the second part for itself, its successors and assigns, does hereby release and discharge the party of the first part, its successors and assigns from all claims, demands, payments of money and right to compensation for or on account of any and all damage which have accrued or may accrue.

(a) By reason of mining and removing the coal, stone, fire clay, iron ore, oil and gas, in and under the said tracts of land proposed to be traversed by said water pipe lines.

(b) By reason of building drains, roads and railroads under and upon the surface of the said tract of land.

(c) By reason of subsidence of the surface of any part of said tracts of land.

(d) By reason of the springs and streams of water on or under the surface of the said tracts of land drying up or decreasing in volume for any reason, or being or becoming diverted from their present or their customary channels.

The said party of the second part hereby covenants and agrees that should at any time the pipe or pipes to be laid on said right of way become broken or disconnected by reason of which water may escape and run into the mines or mines of the party of the first part or its lessees, that the said party of the second part will use due diligence in repairing same and indemnify said party of the first part and its lessees for any damage that may be sustained by reason of said water entering upon or into the mine or mines as aforesaid.

To have and to hold the said right of way and privilege to take water for and during such terms as the party of the second part may actually use the same.

In consideration whereof the party of the second part <sup>agrees</sup> to pay to the party of the first part the sum of Three Hundred Dollars per annum as rental for the said right of way and privilege to take water from Moshannon Creek and the said

Rental to be paid in semi-annually installments of One Hundred and Fifty Dollars each, on the 1st day of January and July in advance; for the purpose of rental payments, the term of this agreement shall be considered to begin on the first day of January 1920, but the party of the second part may enter upon the lands covered by this agreement, for the purpose of laying its pipe lines and reservoir, immediately.

In the event of failure to pay the rental reserved herein as often as the same becomes due, it is agreed by and between the parties of the first part that the party of the second part may, immediately and without notice, disconnect the pipe lines of the party of the second part from the intake for water from the Moshannon Creek, and in any other way prevent the party of the second part from enjoying any rights or privileges under this agreement until said arrears of rent are fully paid, but this remedy shall not exclude resort by the party of the first part to the collections of arrears of rent by legal process.

Both parties hereto hereby constitute and appoint Harry Boulton their, and each of their lawful attorney to acknowledge this instrument before a notary Public, as their and each of their act and deed with the intent that same may be recorded.

In witness Whereof, the parties hereto have, pursuant to resolutions of each of their Board of Directors, caused their corporate seals to be hereto affixed attest- ed by their proper officers.

The Kittanning Coal Co.,

by, Joe H. Burroughs, President.

Attest;

Bertram L. Townsend, Secretary.

The Ramsey Water Company.,

Harry Boulton, President.

Corporate Seal.

Attest;

State of Pennsylvania., } SS. L. W. Beyer, Secretary.

County of Clearfield., } Attest;

Before me, the subscriber, a Notary Public, in and for said County, personally appeared Harry Boulton, the attorney appointed in the foregoing instrument, who in due form of law acknowledged the said instrument to be the act and deed of the Kittanning Coal Company, and the Ramsey Water Company, with the intent that said instrument might be duly recorded.

Witness my hand and seal this 2nd day of July, 1920.

W. P. Harpster, J.P. SEAL.  
My Commission expires First Monday in January, 1924.

See draft in Plat Book 4 page 28.

Entered and Recorded June 11th., 1937.

Scanner 11 scanning Recorder.

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TO WATER AND POWER RESOURCES BOARD, DEPARTMENT OF FORESTS AND WATERS,  
COMMONWEALTH OF PENNSYLVANIA.

STATEMENT OF THE RAMEY WATER COMPANY

1. The date and record of incorporation of the company.  
Also the date and record of any merger, consolidation, or other change,  
in the corporate status of the company.

The application of The Ramey Water Company for a charter under "An Act to provide for the incorporation and regulation of certain corporations", approved April 29, 1874, and the several supplements thereto, in the second paragraph states, "Said corporation is formed for the purpose of the supply of water to the public in the Borough of Ramey, in the County of Clearfield, Penn." The third paragraph states, "The name of the river, stream, or other body of water from which it is proposed to take or use water, and, as near as may be, the points in said river, stream, or other body of water between which said water is proposed to be taken or used, is as follows viz: Mountain Branch Stream about two miles up from its mouth emptying into Moshannon Creek, Rush Township, Centre County, Pa." This application was approved by the Governor on March 30, 1809 and enrolled in Charter Book #106, Page 24, on said date. Letters Patent were issued on March 30, 1909.

The petition of the owners of lots of land in village and resident district known as Smoke Run and Beulah in Bigler Township, Clearfield County, Pa., for the extension of the charter territory of the Company to include the following territory:

"BEGINNING at a post on the Ramey Borough Line at the intersection with Road leading from Ramey to Smoke Run, said post being marked "Borough Line", thence S.  $52^{\circ} 12'$  E. 188.0 feet along Borough Line to an alloy; thence N.  $57^{\circ} 45'$  W. 1855.2 feet to a post; thence N.  $57^{\circ} 15'$  W. 1895 feet to a post; thence S.  $57^{\circ} 45'$  E. 1004 feet to the North side of Township Road leading from Ramey to Smoke Run; thence following the north side of said road to its intersection with the east side of Township Road leading from Smoke Run to Madera; thence, along said road No.  $56^{\circ} 00'$  W. 8.0 feet to the North side of a street; thence S.  $44^{\circ} 24'$  E. 1855.6 feet to a post sixty feet west of the center line of the Mountain Branch of the Pennsylvania Railroad; thence S.  $17^{\circ} 30'$  E. 658.7 feet to a post sixty feet west of the center line of said Railroad; thence S.  $17^{\circ} 03'$  E. 555.5 feet to a post sixty feet west of the same railroad mentioned above mentioned; thence N.  $69^{\circ} 03'$  E. 4135 feet to a post; thence N.  $50^{\circ} 30'$  E. 3507 feet and following the Ramey Borough Line to place of beginning. This was filed with the Recorder of Deeds in the County of Clearfield in Miscellaneous Docket #9 at Page 272 on November 4, 1911 and filed in the office of the Secretary of the Commonwealth on February 20, 1912.

The application of Madera Water Company for a charter under "An Act to provide for the incorporation and regulation of certain corporations", approved April 29, 1874, and the several supplements thereto, in the second paragraph "Said corporation is formed for the purpose of supplying water for the public in the Village of Madera, in the Township of Bigler, County of Clearfield, and State of Pennsylvania, and for partnerships and associations residing therein as may desire the same." This application was approved by the Governor on October 16, 1904 and enrolled in Charter Book #84, Page 78, on said date. Letters Patent were issued on October 16, 1904. The Election Return authorising the sale of franchises and assets of Madera Water Company to The Ramey Water Company was filed in the office of the Secretary of the Commonwealth on October 16, 1904.

EXHIBIT

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STATEMENT OF THE RAMEY WATER COMPANY (CONT'D.)

The report of the sale of the franchises and assets of Madera Water Company to The Ramey Water Company dated November 30, 1932 and approved by the Public Service Commission in Application Docket #24749-1932, as evidenced by the Certificate of Public Convenience dated November 1, 1932, was filed in the office of the Secretary of the Commonwealth on November 30, 1932.

The application of The West Houtzdale Water Company for a Charter under "An Act to provide for the incorporation and regulation of said corporations", approved April 29, 1874, and the several supplements thereto, states in the second paragraph, "Said Corporation is formed for the purpose of the supply of water to the public in Woodward Township, Clearfield County, Pennsylvania." It states in the third paragraph, "The name of the river, stream, or other body of water from which it is proposed to take or use water and, as near as may be the points on said river, stream or other body of water between which said water is proposed to be taken or used is as follows; viz: from Mountain Branch Stream, about three miles up from its mouth emptying into Moshannon Creek in Rush Township, Centre County, Pennsylvania." This application was approved by the Governor on November 7, 1908 and enrolled in Charter Book #106, Page 18, on said date. Letters Patent were issued on November 7, 1908.

The application of the owners of lots of land and tract of land or residence district abutting on Swoope and \_\_\_\_\_ Streets in the Borough of Brisbin, Clearfield County, Pennsylvania, for an extension of the charter territory of the Company to include the following: "Resolved, that in accordance with a petition of the majority of the lot owners in a tract of land adjacent to the charter territory of this company, to wit: a tract of land three hundred and twenty five feet wide having Swoope Street in the Borough of Brisbin for its center and beginning at Red Men's Hall and thence by said street in a westerly direction twenty six hundred feet to Brisbin cemetery; and beginning at intersection of Swoope Street and Teutonic Avenue and having Teutonic Avenue for its center, and thence in a Southerly direction by said Teutonic Avenue eleven hundred feet and to Woodward Township line." Said extension of territory was recorded by the Recorder of Deeds of the County of Clearfield on August 10, 1909 in Miscellaneous Book No. 5, Page 377 and was filed in the office of the Secretary of the Commonwealth on February 15, 1909.

The applications of the lot owners in the Town of Morann for an extension of the charter territory of the Company to include the following:

"Beginning at South boundary line of the right of way of Pennsylvania Railroad Company and in boundary line of Woodward and Gulich Townships; thence by said right of way of P.R.R. in a Westerly direction and embracing a strip of land six hundred feet wide to where Elder Street intersects said right of way; said South line of right of way being the center of the strip thence by said right of way in a Westerly direction and embracing a strip of land four hundred feet wide lying to the South of said right of way to where Hazel Street intersects said right of way;"

This extension was recorded in the Recorder's office for the County of Clearfield on December 29, 1915 in Miscellaneous Book 10, Page 459 and filed in the office of the Secretary of the Commonwealth on December 30, 1915.

STATEMENT OF THE RAMEY WATER COMPANY (CONT'D.)

The Election Return authorizing the sale of the franchises and assets of The West Houtzdale Water Company to The Ramey Water Company was filed in the office of the Secretary of the Commonwealth on October 8, 1931.

The report of the sale of the franchises and assets of The West Houtzdale Water Company to The Ramey Water Company, dated November 30, 1932, and approved by the Public Service Commission in Application Docket #24750-1932, was filed in the office of the Secretary of the Commonwealth on November 30, 1932.

The application of Houtzdale Water Company for a Charter under "An Act for the incorporation and regulation of corporations", approved April 29, 1874, and the several supplements thereto, in the second paragraph states, "The purpose for which it is formed is the supply of water to the public at Houtzdale and its vicinity". This application was approved by the Governor on August 16, 1887 and enrolled in Charter Book #24, Page 23 $\frac{1}{2}$ , on said date. Letters Patent were issued August 16, 1887.

The Election Return of The Houtzdale Water Company authorizing the sale of its assets and franchises to The Ramey Water Company was filed in the office of the Secretary of the Commonwealth on October 8, 1931 and recorded in Miscellaneous Corporation Record Book #188, Page 142.

The report of the sale of the assets and franchises of The Houtzdale Water Company to The Ramey Water Company, dated November 30, 1932, and approved by the Public Service Commission in Application Docket #24750-1932 is evidenced by its Certificate of Public Convenience dated November 1, 1932 and was filed in the office of the Secretary of the Commonwealth on November 30, 1932.

There have been no other amendments to the Charter of the Company embodying any extension to the charter territory which it is authorized to serve.

2. The records of the Company do not reveal the adoption of a resolution appropriating the Mountain Branch source of supply but water was taken from this source in the year 1887 and continuously thereafter. On the 28th day of August, 1931, a designation of sources of supply was filed by the Company in the office of the Water and Power Resources Board and was approved by the said Board on the 12th day of April, 1932. A copy of the certificate, as filed, is shown in "Exhibit A", attached.

At a stockholders' meeting of The Ramey Water Company held on June 11, 1912 a resolution was passed "that The Ramey Water Company make application to the Water Supply Commission of Pennsylvania and to the Health Department of Pennsylvania for the approval of such new and additional water supply upon the head waters of Moshannon Creek for said Company and that the Company proceed to secure by lease and purchase from riparian owners the necessary lands, rights-of-way, release of damages, etc." A copy of this resolution is also shown in "Exhibit A", attached.



The Company first started taking water from the Moshannon Creek supply in the year 1912 and has been using same continuously since this date. On the 28th day of August, 1931, a designation of sources of supply was filed by the Company in the office of the Water and Power Resources Board and was approved by the said Board on the 12th day of April, 1932. A copy of the certificate, as filed, is shown in "Exhibit A", attached.

STATEMENT OF THE RAMEY WATER COMPANY (CONT'D.)

The records of the Company do not reveal the adoption of a resolution appropriating the Truman Run source of supply, but the water was taken from this source in the year 1917 and continuously thereafter. On the 28th day of August 1931, a designation of sources of supply was filed by the Company in the office of the Water and Power Resources Board and was approved by the said Board on the 12th day of April, 1932. A copy of the certificate, as filed, is shown in "Exhibit A", attached.

3. The date of the appropriation of the Mountain Branch supply was in the year 1887.

The date of the appropriation of the Moshannon Creek supply was in the year 1912.

The date of the appropriation of the Truman Run supply was in the year 1917.

4. The date when the actual taking occurred from Mountain Branch supply was in the year 1887.

The date when the actual taking occurred from Moshannon Creek supply was in the year 1912.

The date when the actual taking occurred from the Truman Run supply was in the year 1917.

5. This Company's entire supply is secured from an impounded dam on Mountain Branch, an impounded supply upon Moshannon Creek and an intake from Truman Run. The locations of the above sources of supply are as shown in "Exhibit B", which is a photostatic copy of the Houtzdale and Philipsburg Quadrangles of the U. S. Geological Survey Maps.

6. During the year 1937, the Company used from its sources of supply approximately 292 million gallons.  
*365 - 800. - 6/25*

7. No records are available regarding the low water flows in the streams that make up this Company's source of supply.

8. It is estimated that the reasonable future needs for this Company from its sources of supply will be the entire flow of the streams, as in the past.

Attest:

*R. M. Shreve*

THE RAMEY WATER COMPANY

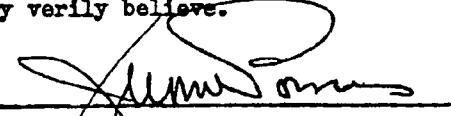
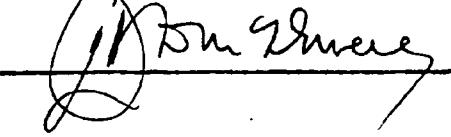
By *John L. Ramey*  
President.

STATE OF NEW YORK,      )  
                            ) SS.:  
COUNTY OF NEW YORK.    )

Before me, a Notary Public in and for said County and State, personally appeared JEROME POWERS, and H. D. McDOWELL, who being by me first duly sworn according to law, do depose and say that they are the President, and Secretary, respectively, of THE RAMEY WATER COMPANY, and that as such they are authorized to sign and verify the attached statement under Act No. 64 of the General Assembly of Pennsylvania, approved April 8, 1937, and that the facts set forth in the said statement attached hereto are correct and true as they verily believe.

Sworn to and subscribed before me  
this 15th day of March, 1938.

  
S. S. SEIP, Notary Public, Bronx County  
Bronx Co. Clerk's No. 421, Reg. No. 457-S-39  
Cert. filed N. Y. C. Clerk's No. 11, Reg. No. 2-S-1276  
Commission Expired May 1, 1940

181-001-3-010

Commonwealth of Pennsylvania  
Department of Forests and Waters

**WATER AND POWER RESOURCES BOARD**

**PERMIT**

To HOUTSDALE MUNICIPAL AUTHORITY

For an allocation of water and water  
rights in the amount of 700,000 gal-  
lons of water per day from Mountain  
Branch at a point about 4 miles south-  
east of Houtsdale, 700,00 gallons of  
water per day (during the dry season)  
from Lower Mountain Branch (also known  
as Truman Run) about 3 miles southeast  
of Houtsdale, and 300,000 gallons of  
water per day from McLeaman Creek  
about 6 miles south of Houtsdale, all  
in Rush Township, Centre County

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF FORESTS AND WATERS  
WATER AND POWER RESOURCES BOARD

PERMIT

The Water and Power Resources Board, under and by virtue of the authority vested in and imposed upon it by an Act of the General Assembly of Pennsylvania, entitled "An Act relating to the acquisition of rights to divert water from rivers, streams, natural lakes, and ponds, or other surface waters within the Commonwealth or partly within and partly without the Commonwealth" etc., approved the 24th day of June, one thousand nine hundred and thirty-nine, P. L. 842 (Act No. 365) hereby grants leave to HOUTZDALE MUNICIPAL AUTHORITY

with its principal offices located in Houtzdale, Pennsylvania

to acquire and use for public water supply purposes, subject to such existing rights and uses as may now be lawful, water rights in the following designated waters of the Commonwealth: \_\_\_\_\_  
200,000 gallons of water per day from Mountain Branch at a point about four miles southeast of Houtzdale, or 700,000 gallons of water per day (during the dry season) from Lower Mountain Branch (also known as Truman Run) about three miles southeast of Houtzdale, and 300,000 gallons of water per day from Koshannoc Creek about six miles south of Houtzdale, all in East Township, Centre County.

This permit is issued in response to an application filed in the office of the Water and Power Resources Board on the 1st day of August, A. D. 1967, and with the understanding that the proposed source of water supply shall be developed as set forth in said application and in accompanying data filed with and made a part thereof \_\_\_\_\_

subject, however, to the provisions of the Act of June 24th, 1939, P. L. 842 (No. 365), and the following conditions, regulations and restrictions:

1. This permit does not give any property rights, either in real estate or material, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement or interest in, to or over any land belonging to the Commonwealth of Pennsylvania; neither does it authorize any injury to private property nor invasion of private rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining Federal assent when necessary;

2. The duration of this permit shall be for a period of 50 years only, provided, however, that should the permittee for any reason whatsoever fail to take and use the water or water rights for which the permit is issued within a period of four (4) years, then this permit shall cease and be null and void; unless upon application of the permittee an extension of such period is granted by the Board.

3. The permittee shall, within twelve (12) months after the date of this permit, file proof with the Board of the method and extent of its acquisition;

4. The construction of the works necessary for the development of the supply of water allocated under this permit shall be begun within two (2) years from the date of the permit and completed within two (2) years thereafter, a total period of four (4) years;

5. Permit No. WA-106, issued to the Ramsey Water Company on June 9, 1943, is hereby revoked and shall be returned to the Water and Power Resources Board.

6. The permittee shall install accurate measuring and recording instruments or devices to determine the amount of water taken at each source. The design and layout of said measuring devices shall be submitted to and be approved by the Chief Engineer of the Board before installation. Records of daily flow readings shall be submitted to the Board at the end of each month and the original field records shall be available at all times for inspection by representatives of the Board. The required measuring devices shall be installed and

readings shall begin immediately upon the use of the water for intended purposes.

WITNESS my hand as Chairman of the Water and Power Resources Board this 14th  
day of November 67, A. D. 1967

WATER AND POWER RESOURCES BOARD

Maurice L. Goddard, Chairman

ATTEST:

J. Ferguson, Secretary

R E P O R T  
UPON THE APPLICATION  
FOR  
WATER ALLOCATION

\* \* \* \* \*

Permit to be issued: To Houtzdale Municipal Authority for an allocation of water and water rights in the total amount of 700,000 gallons of water per day from Mountain Branch at a point about four (4) miles southeast of Houtzdale, of 700,000 gallons of water per day (during the dry season) from Lower Mountain Branch (also known as Truman Run) about three (3) miles southeast of Houtzdale, and 300,000 gallons of water per day from Moshannon Creek about six (6) miles south of Houtzdale, all in Rush Township, Centre County.

Application received . . . . . August 1, 1967  
Sources . . . . . Mountain Branch, Lower Mountain Branch (Truman Run), and Moshannon Creek  
Watershed area above taking point . . . 9.7 square miles (Mountain Branch and Truman Run),  
2.5 square miles (Moshannon Creek)

Amount of allocation issued to . . . . .  
Ramey Water Co. Permit No. WA-106 . . . . . 1,000,000 gpd  
(all sources)

Amount requested and recommended:

Mountain Branch . . . . . 700,000 gpd  
Lower Mountain Branch (Truman Run) . . . . . 700,000 gpd  
(dry season)  
Moshannon Creek . . . . . 300,000 gpd

\* \* \* \* \*

The Houtzdale Municipal Authority has purchased the assets of the Ramey Water Company from the American Water Works Service Company. The Authority has requested the water allocation formerly held by the Ramey Water Company, and an increase in allocation from 1,000,000 gpd to 1,500,000 gpd.

The Ramey Water Company, predecessor to the Authority, was incorporated in March, 1909, to supply water to the Borough of Ramey in Clearfield County.

In November, 1932, the Ramey Water Company filed a report in the office of the Secretary of the Commonwealth of purchasing the Madera Water Company (incorporated in October, 1904, supplying water to the Village of Madera and Bigler Township), West Houtzdale Water Company (incorporated in November, 1908, supplying Woodward Township), and Houtzdale Water Company (incorporated in August, 1887, and supplying Borough of Houtzdale).

The Ramey Water Company was issued Order of Confirmation No. WA - 106 on June 9, 1943, allocating 1,000,000 gallons of water per day from Mountain Branch about four miles southeast of Houtzdale, Moshannon Creek about four miles southeast of Ramey, and Truman Run about four miles southeast of Houtzdale, all in Rush Township, Centre County.

In applying for the Order of Confirmation the Company declared that their water needs were 800,000 gpd, and estimated their future needs to be about 1,000,000 gpd. About forty per cent of the allocation was used by the railroad and industry.

The population in the Authority's service area appears to be fairly stable, being given as approximately 8,000 people in 1943, and given in the present application as 7,347 people in Gulich, Bigler, and Woodward Townships, and the Boroughs of Houtzdale, Brisban, and Ramey, all in Clearfield County.

The application estimates average water consumption as 1,000,000 gpd for each of the last three years (1964-66). Consumption was estimated as 750,000 gpd in 1957. In 1943 water consumption was declared to be 800,000 gpd. Water consumption is presently used as follows:

Domestic . . . . .	987,000 gpd
Commercial . . . . .	8,000 gpd
Industrial . . . . .	5,000 gpd
Bulk . . . . .	None
Total . . . . .	1,000,000 gpd

On the basis of this information, it would appear that while the population has slightly decreased (8,000 to 7,347), and industrial and commercial use has decreased from 40% (in 1943) to virtually zero, total consumption has increased from 800,000 gpd to 1,000,000 gpd. However, consumption figures are all estimates. It is possible that the decline in industrial use has been offset by the increase in domestic demand, and that total water use is not much different than twenty-four years ago when the Order of Confirmation was issued.

The Authority has applied for 1,500,000 gpd for future needs. There are no measurements of flow in the vicinity of the intakes but a correlation was made with the U. S. Geological Survey gage on Moshannon Creek at Osceola Mills. On the basis of this correlation and other information (all of which is cited below) it appears that there will be times when 1,500,000 gpd will not be available without storage. About one million gallons per day appears to be the safe yield of the sources.

The drainage area of the USGS stream gage at Osceola Mills is 68.8 square miles, while the total drainage area of all the Authority's sources is 12.2 square miles. The minimum instantaneous flow in the period of record (1940-1966) at the gage was 6.9 cfs (4.46 mgd on December 5, 1957). The lowest one day flow during the last six years is as follows:

1961	10	cfs
1962	8.9	cfs
1963	15	cfs
1964	12	cfs
1965	8.5	cfs
1966	8.9	cfs

Or an average one day low flow of 10.6 cfs (6.8 mgd).

If this is prorated for the drainage area of the Authority's sources the following low flows are obtained.

Low flow of record (6.9 cfs) . . . . . 0.79 mgd  
One day low flow for lowest day of 1961-66  
drought (8.5 cfs) . . . . . 0.98 mgd

Average one day low flow for drought  
1961-66, (10.6 cfs) . . . . . 1.22 mgd

Busch and Shaw in a study of the low flow characteristics of Pennsylvania streams show the minimum one day low flow at the stream gaging station at Osceola Mills to have been 5.0 mgd on September 21, 1955, and duration and frequency of low flows at the Osceola gage to be as follows:

7 day duration, 50 year frequency low flow . . . . . 3.2 mgd  
7 day duration, 20 year frequency low flow . . . . . 3.7 mgd  
7 day duration, 10 year frequency low flow . . . . . 4.4 mgd

and

30 day duration, 50 year frequency low flow . . . . . 4.5 mgd  
30 day duration, 20 year frequency low flow . . . . . 5.0 mgd  
30 day duration, 10 year frequency low flow . . . . . 5.8 mgd

If this data is prorated to the Authority's sources the following flows are obtained:

7 day duration, 50 year frequency low flow . . . . . 0.57 mgd  
7 day duration, 20 year frequency low flow . . . . . 0.66 mgd  
7 day duration, 10 year frequency low flow . . . . . 0.78 mgd

and

30 day duration, 50 year frequency low flow . . . . . 0.80 mgd  
30 day duration, 20 year frequency low flow . . . . . 0.89 mgd  
30 day duration, 10 year frequency low flow . . . . . 1.00 mgd

-4-

If the requested allocation of 1.5 mgd at the sources is prorated to the stream gage at Osceola Mills, a flow of  $1.5 \times \frac{68.8}{12.2} \times 1.55$ , or 13.1 cfs is required.

Busch and Shaw's study indicates that this flow would be available at 96% of the time.

Information in the files on the Ramey Water Company confirm the information in Bush and Shaw's report. In a letter written on March 16, 1943, Mr. M. J. Garland, Vice-President of the Ramey Water Company, stated there were times during each year, especially in dry weather, when the Company took the entire flow of the streams (consumption in 1943 was stated to be 800,000 gpd). At that time the Company was asking for the entire flow of the streams, but the Board was reluctant to confirm an allocation for the "entire flow", and issued a permit for 1,000,000 gpd which it felt represented a good estimate of future demand.

It appears that there may be a few times when 1,500,000 gpd will not be available, and the Authority's attention is called to the fact that 1,000,000 gpd, rather than 1,500,000 gpd, represents the safe yield from their sources without storage.

None of the Authority's intake dams has any appreciable storage capacity (Mountain Branch 25,000 gallons; Truman Run 10,000 gallons; Moshannon Creek 15,000 gallons). The distribution reservoirs and tanks owned by the Authority do not have more than a one-day supply (Ramey Reservoir - 350,000 gallons, Houtzdale Reservoir 650,000 gallons, other 125,000 gallons, for total of 1,125,000 gallons).

The water requires no filtration or treatment other than chlorination.

There appear to be no riparian owners or public water supply agencies who will be adversely affected by the proposed allocation, nor will it jeopardize public safety or cause substantial injury to the Commonwealth.

The Pennsylvania Fish Commission and the Department of Health have no objections to the proposed water allocation.

The required \$25.00 filing fee has been paid.

Approval of the application and issuance of a permit are recommended, granting to the Houtzdale Municipal Authority an allocation of 700,000 gallons of water per day from Mountain Branch at an existing intake about four miles southeast of Houtzdale, 700,000 gallons of water per day (during the dry season) from Lower Mountain Branch (also known as Truman Run) at an existing intake about three miles southeast of Houtzdale, and 300,000 gallons of water per day from Moshannon Creek at an existing intake about six miles south of Houtzdale, all intakes in Rush Township, Centre County, and subject to the following conditions:

Permit No. WA-106, issued to the Ramey Water Company on June 9, 1943, is hereby revoked and shall be returned to the Water and Power Resources Board.

The permittee shall install accurate measuring and recording instruments or devices to determine the amount of water taken at each source. The design and layout of said measuring devices shall be submitted to and be approved by the Chief Engineer of the Board before installation. Records of daily flow readings shall be submitted to the Board at the end of each month and the original field records shall be available at all times for inspection by representatives of the Board. The required measuring devices shall be installed and readings shall begin immediately upon the use of the water for intended purposes.

Respectfully submitted,

*Arthur T. Alter*  
Arthur T. Alter  
Hydraulic Engineer

The foregoing recommendation is concurred in:

*A. M. Lunetta*  
A. M. Lunetta, Chief  
Division of Dams and Encroachments

*C. H. McConnell*  
C. H. McConnell  
Chief Engineer

HMA  
FILE #1810013010  
WATER ALLOCATION PERMITS

DA-501-A 10-64

*Clearfield*  
SUBJECT:

Proposed Water Allocation  
Clearfield County

COMMONWEA OF PENNSYLVANIA

August 15, 1967

WDE WA 106-A

TO: A. M. Lunetta, Chief  
Division of Dams and Encroachments  
Department of Forests and Waters  
FROM: Ralph J. Putt  
Administrative Secretary  
Pennsylvania Fish Commission

BARNHARD	
BARTLETT	
BEARD	
FERGUSON	
LUNETTA	✓
O'BRIEN	
OLDHAM	
TOOTHAKER	
SOMMERVILLE	
MAY	

8/18/67

217cr

In reply to your memorandum August 8, this Commission has no objection to the application submitted by the Houtzdale Municipal Authority to take 700,000 gallons of water per day from Mountain Branch (during the dry season) from Lower Mountain Branch (Truman Run), and 300,000 gallons per day from Moshannon Creek at the existing intakes formerly owned by the Ramey Water Company.

G



181-031-3-000

FILE: CONSENT ORDER

Pennsylvania Department of Environmental Protection

Office of Chief Counsel

208 West Third Street

Suite 101

Williamsport, PA 17701-6448

August 3, 1999

Northcentral Regional Office

570-321-6568

FAX: 570-327-3565

Laurie Shepler, Esquire  
Pennsylvania Fish & Boat Commission  
3532 Walnut Street  
PO Box 67000  
Harrisburg, PA 17106-7000

John R. Carfley, Esquire  
222 Presque Isle Street  
PO Box 249  
Philipsburg, PA 16865

John E. Childe, Esquire  
606 Pine Road  
Palmyra, PA 17078

Re: PFBC & PEDF v. HMA and DEP  
EBB Docket No. 97-266-C (Consolidated with 97-268-C)

Dear Counsel:

Enclosed you will each find one (1) fully-executed original Consent Order and Agreement settling the above-named (finally!). The effective date is August 3, 1999. Paragraph 3(m) states that within ten (10) days after the effective date of this Consent Order and Agreement, PFBC and PEDF shall withdraw their Appeals.



Laurie Shepler, Esquire  
John R. Carfley, Esquire  
John E. Childe, Esquire

2

August 3, 1999

On behalf of the Department, I am glad we were able to resolve this matter.

Sincerely yours,

*Amy Ershler*

Amy Ershler  
Assistant Counsel

Enclosure

cc: William Kosmer  
Larry T. Welfer  
Jeffery C. Hoover

AE/kdt

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of

Houtzdale Municipal Authority  
Houtzdale, PA  
Clearfield County

Settlement of Appeal filed from  
Issuance of Water Supply Operational  
Permit No. 1794502

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 3rd day of August, 1999, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter "Department"), Houtzdale Municipal Authority (hereinafter "HMA"), the Pennsylvania Fish & Boat Commission (hereinafter "PFBC") and the Pennsylvania Environmental Defense Foundation (hereinafter "PEDF").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, 35 P.S. §721.1 et seq. ("Safe Drinking Water Act"); the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §691.1 et seq. ("CSL"); Section 1917-A of the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17 ("Administrative Code"); and the Rules and Regulations promulgated thereunder.

B. HMA is a municipal authority, duly constituted by the Borough of Houtzdale, which owns and operates a public water system in and near the Borough of Houtzdale, Clearfield County. HMA's address is 731-I Kirk Street, Houtzdale, PA 16651. HMA serves approximately 2,805 connections in and around the Borough of Houtzdale. HMA's public water system is a community water system as that term is defined by the Safe Drinking Water Act, 35 P.S. §721.3.

C. The PFBC is the agency with the duty and authority to enforce the Fish & Boat Code, the Act of October 16, 1980, P.L. 996, No. 175, 30 Pa. C.S.A. §101 *et seq.* PFBC's address is 3532 Walnut Street, PO Box 67000, Harrisburg, PA 17106-7000.

D. The PEDF, with an address of 606 Pine Road, Palmyra, PA 17078, is a non-profit association under the laws of Pennsylvania whose principal purpose is to represent its members' interests in protecting and preserving their environment.

E. On September 18, 1997, the Department issued Operational Permit No. 1794502 to HMA that applied to all facilities, including Wells TH-4, TH-5, and TH-10.

F. Notice of the issuance of this operational permit was provided to all parties and was published in the *Pennsylvania Bulletin* as is required by the Rules and Regulations governing such issuance by the Department.

G. Subsequent to that issuance, the Department discovered that a mistake was made in the special conditions governing the use of Wells TH-4, TH-5, and TH-10, in that the November 29, 1994 construction permit contained a provision allowing the use of Well TH-10 only when Wells TH-4 and TH-5 were not in use. That condition should have been included in the September 18, 1997 permit but was inadvertently omitted.

H. No appeals were filed from the issuance of the November 29, 1994 construction permit nor were any appeals filed from the operational permit issued on September 18, 1997.

I. Thereafter on October 9, 1997, the Department reissued Public Water Supply Operational Permit No. 1794502 (hereinafter the "Permit") to HMA for the operation of the three wells known as TH-4, TH-5 and TH-10, as well as Trim Root Run of the Mountain Branch of Moshannon Creek. All sources were required to be filtered. In addition, HMA uses Mountain Branch as a source supply.

J. The Permit included Special Condition D and Special Condition E – provisions relating to the restricted use of Wells TH-4, TH-5 and TH-10, as well as a schedule for the sequential pumping of the wells. The Permit was identical to the construction permit issued on November 29, 1994, and the Public Water Supply Operational Permit issued on September 18, 1997, except that the Public Water Supply Operational Permit issued on September 18, 1997, did not include the special condition dealing with the sequential pumping of the wells.

K. Special Condition D of the Permit states that Well TH-4 is limited to a maximum flow rate of 400 gallons per minute (hereinafter "gpm"); Well TH-5 is limited to a maximum flow rate of 300 gpm; Well TH-10 is limited to a maximum flow rate of 800 gpm.

L. Special Condition E of the Permit requires that Well TH-10 may not run simultaneously with TH-4 or TH-5.

M. Notice of the reissuance of the Permit was provided to the Appellant, PEDF, by a letter from Eric D. Hower, Sanitary Engineer for the Department, on October 10, 1997. Notice of the reissuance of the Permit was provided to Appellant, PFBC, by letter dated October 10, 1997. Receipt of these notices is acknowledged by both Appellants in their Notice of Appeal.

N. Notice of issuance of the Permit was published in the *Pennsylvania Bulletin* on November 15, 1997.

O. On December 8, 1997, the PEDF filed an appeal from the issuance of the Permit with the Environmental Hearing Board (hereinafter "EHB") which was docketed to EHB Docket No. 97-266-C. On December 12, 1997, the PFBC filed an appeal from the issuance of the Permit with the EHB. The appeal was docketed to EHB Docket No. 97-268-C. Upon the request of all parties, both matters were consolidated at EHB Docket No. 97-266-C (Consolidated with 97-268-C) by EHB Order dated February 3, 1998.

P. Both appeals raise the issue of whether the Department addressed the environmental impacts of the wells' operation on stream flows and the surrounding watershed.

Q. Since the appeals have been filed, all parties have met to pursue settlement. Settlement has focused on HMA conducting an indepth monitoring program in the Trim Root Run Watershed to see what impact, if any, there may be on the surrounding watershed. The parties have come to an agreement with regard to settling the appeals, as set forth below.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by HMA, PFBC, and PEDF as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 5 of the Safe Drinking Water Act, 35 P.S. §721.5, Section 5 of the Clean Streams Law, 35 P.S. §691.5, and Section 1917-A of the Administrative Code, supra.

2. **Findings.**

(a) HMA, PFBC, and PEDF agree that the findings in Paragraphs A through Q are true and correct and, in any matter or proceeding involving HMA, PFBC, PEDF and the Department, HMA, PFBC, and PEDF shall not challenge the accuracy or validity of these findings.

(b) The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Corrective Action.**

(a) PFBC and HMA have chosen a location along Trim Root Run to establish a passby flow as set forth more fully in Paragraph 3(b), below. Attached to this Consent Order and Agreement is a map marked as Exhibit A, incorporated herein by reference. The passby

flow will be measured by placement of a permanent weir. The location of the weir is marked on Exhibit A. HMA will design the weir, and PFBC will review and approve the design and type of automatic monitoring device and frequency. HMA will construct the weir and equip it with the approved automatic monitoring device on or before September 15, 1999. HMA will maintain and operate the weir and monitoring equipment.

(b) HMA and PFBC will establish a final passby flow by July 31, 1999, unless HMA and PFBC mutually agree to extend that deadline. HMA and PFBC will advise PEDF and the Department when the passby flow is established. From the time that the final passby flow is established until the permanent weir is in place, a staff gage will be utilized to measure the passby flow on Trim Root Run. HMA will make weekly readings of the staff gage from the effective date of this Consent Order and Agreement until the establishment of a passby flow. After HMA and PFBC establish a passby flow, HMA will make daily readings, first utilizing the staff gage and then the permanent weir. HMA will cease pumping Well TH-5 whenever the stream flows drop below the established passby flow at the agreed upon location. Whenever the stream flows are equal to or greater than the passby flow, HMA may use Well TH-5 pursuant to the terms of Operation Permit No. 1794502. If at any time after the passby flow is established, HMA and PFBC mutually agree, the passby flow may be amended. HMA and PFBC will advise PEDF and the Department if the passby flow is amended.

(c) If HMA determines that it will no longer use Well TH-5 and abandons it, all obligations for monitoring TH-5 as set forth in Paragraphs 3(a) and 3(b), above, will cease.

(d) All parties have agreed to a comprehensive monitoring plan. The comprehensive monitoring plan is marked as Exhibit B, attached hereto and incorporated herein by reference.

(e) HMA will monitor various springs in accordance with Exhibit B. The names of the springs and locations of the weirs are identified on Exhibit A. Except as set forth in Paragraph 3(a), above, HMA will construct the weirs identified in Exhibit A in the Trim Root Run Watershed by August 15, 1999. HMA will maintain and operate the weirs and monitoring equipment.

(f) HMA will continue to monitor in the Trim Root Run Watershed according to the terms of the monitoring plan set forth at Exhibit B. HMA will forward all data gathered from the ongoing monitoring to PFBC, PEDF and the Department, at a minimum, on a quarterly basis or, more frequently, as requested. From time to time, PFBC also will gather data regarding the Trim Root Run Watershed. PFBC will notify HMA, PEDF and the Department of the data gathering and will forward these data to HMA, PEDF and the Department upon request.

(g) Data gathering to determine the possible impact on stream flows and as set forth in Exhibit B and Paragraphs 3(d), 3(e), and 3(f), above, will continue until December 31, 2004, unless all parties agree that it is not necessary to gather data for that length of time. On or before October 31, 2001, the parties shall meet to review the gathered data from the Exhibit B monitoring plan. In addition, other data that a party deems relevant to aid in determining whether there is any impact on stream flows can be reviewed and discussed at the meeting. If the parties cannot agree on or before October 31, 2001, whether there is an impact on stream flows, additional data shall be collected and the parties shall reconvene at least annually from October 31, 2001, until December 31, 2004, to review and discuss the impact on stream flows.

(h) Within thirty (30) days from the effective date of this Consent Order and Agreement, HMA will provide the Department, PFBC, and PEDF with copies of all data it has gathered from October 7, 1997, to the effective date of the Consent Order and Agreement, regarding all well operation and spring and stream flow monitoring in the Trim Root Run Watershed.

(i) HMA will develop the Moshannon Creek Watershed or other sources as chosen by HMA to provide additional surface water and/or groundwater sources. HMA shall submit its feasibility study to the Department within eighteen (18) months from the effective date of this Consent Order and Agreement. HMA shall submit its permit application to the Department within six (6) months of the Department's approval of the feasibility study.

(j) If the parties agree that the data that have been gathered (as described in Paragraph (g), above) show that the pumping of Well TH-4 and/or Well TH-10 impacts stream flows, HMA will install up to five (5) pairs of shallow monitoring wells in the Trim Root Run Watershed as follows. HMA is not required to install the five (5) pairs of monitoring wells until it has developed the Moshannon Creek Watershed or other sources as described in Paragraph 3(i), above.

(i) Within thirty (30) days after the parties agree that there is an impact on the stream flows, the parties shall agree on the number and location of the shallow monitoring wells;

(ii) Within the same thirty (30) day period, the parties shall also agree to the terms of a monitoring plan for the shallow monitoring wells;

(iii) Within seven (7) months from the date that the parties agree that there is an impact on stream flows, HMA shall install the agreed upon number of shallow monitoring wells at the agreed upon locations; and

(iv) HMA shall monitor the shallow monitoring wells for twelve (12) months from the date of their installation.

*Aut 3, 2001  
Apr 5, 2001  
Apr 6, 2001  
18 mo  
Permit 6 months after approval  
F/S*

(k) During the twelve (12) months that HMA monitors the shallow monitoring wells, the parties shall meet to determine whether the data from the shallow monitoring wells show an impact on stream flows. If the parties agree at any time that there is an impact, the parties shall determine within six (6) months from the date that they agree that there is an impact what remedial or other action, if any, shall be taken.

(l) If the parties cannot agree to:

- (i) the establishment of a final passby flow as described in Paragraph 3(b), above, by July 31, 1999, unless that deadline has been mutually extended by HMA and PFBC, but by no later than September 1, 1999; and/or
- (ii) whether there are any impacts on stream flows as described in Paragraph 3(g), above, but by no later than December 31, 2004; and/or
- (iii) the number or location of the shallow monitoring wells or the terms of a monitoring plan for the shallow monitoring wells within thirty (30) days from the date that the parties agree there is an impact on stream flows as described in Paragraph 3(j), above; and/or
- (iv) whether there are any impacts on stream flows as set forth in the monitoring results from the shallow monitoring wells as described in Paragraph 3(j), above, by no later than sixty (60) days after the monitoring is complete; and/or
- (v) the type of action to be taken with regard to any impacts on stream flows as shown by the monitoring results of the

shallow monitoring wells, described in Paragraph 3(k), above, within six (6) months after the parties agree that there is an impact,

then the Department shall make a final decision for the areas of dispute as set forth in any of Paragraphs 3(l)(i through v) as follows:

- (vi) for Paragraph 3(l)(i), the Department shall establish a final passby flow as described in Paragraph 3(b), above; and/or
- (vii) for Paragraph 3(l)(ii), the Department shall establish what impacts there are on stream flows from the data gathered and described in Paragraph 3(g), above; and/or
- (viii) for Paragraph 3(l)(iii), the Department shall determine what type of monitoring plan shall be used for the shallow monitoring wells as described in Paragraph 3(j), above; and/or
- (ix) for Paragraph 3(l)(iv), the Department shall establish what impacts there are on stream flows from the monitoring results of the shallow monitoring wells described in Paragraph 3(j), above; and/or
- (x) for Paragraph 3(l)(v), the Department shall determine, what action, if any, shall be taken with regard to any impacts on stream flows as shown by the monitoring results of the shallow monitoring wells, as described in Paragraph 3(k), above.

Notwithstanding the language in Paragraph 15, infra, a decision made under this Paragraph 3(l) is considered to be a final action, and any appeal from said decision(s) shall be filed with the EHB within thirty (30) days of receipt of the decision.

(m) Within ten (10) days after the effective date of this Consent Order and Agreement, PEDF and PFBC shall withdraw their appeals filed to EHB Docket No. 97-266-C and No. 97-268-C, respectively, which were consolidated at EHB Docket No. 97-266-C (Consolidated with 97-268-C) by EHB Order dated February 3, 1998, as set forth in Paragraph O above. The appeals are withdrawn without prejudice as to the specific monitoring issues and the specific impact issues set forth in Paragraphs 3(b), 3(g), 3(j), 3(k) and 3(l), above.

4. Additional Remedies.

(a) In the event HMA, PFBC, and PEDF fail to comply with any provision of this Consent Order and Agreement, the Department may, pursue any remedy available for a violation of an order of the Department, including an action to enforce this Consent Order and Agreement.

(b) The remedies provided by this paragraph are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy.

5. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. HMA, PFBC, and PEDF reserve the right to challenge any action which the Department may take to require those measures.

6. Liability of Operator. HMA, PFBC, and PEDF shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors, and also shall be liable for any violation

of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

**7. Transfer of Site.**

(a) The duties and obligations under this Consent Order and Agreement shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the community water system or any part thereof.

(b) If HMA intends to transfer any legal or equitable interest in the community water system which is affected by this Consent Order and Agreement, HMA shall serve a copy of this Consent Order and Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the Regional Office of the Department, PFBC and PEDF of such intent.

(c) The Department in its sole discretion may agree to modify or terminate HMA's duties and obligations under this Consent Order and Agreement upon transfer of the community water system. HMA waives any right that it may have to challenge the Department's decision in this regard.

**8. Correspondence with Department.** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Larry T. Welfer  
Environmental Program Manager  
Water Supply Management  
Department of Environmental Protection  
208 West Third Street, Suite 101  
Williamsport, PA 17701-6448  
570-327-3490

**9. Correspondence with HMA, PFBC, and PEDF.** All correspondence with HMA, PEDF and PFBC concerning this Consent Order and Agreement shall be addressed as follows:

Houtzdale Municipal Authority

John Fudrow  
PO Box 97  
731-I Kirk Street  
Houtzdale, PA 16651  
Telephone: (814) 378-8131  
Fax: (814) 378-8134

Pennsylvania Fish & Boat Commission

Leroy Young  
450 Robinson Lane  
Bellefonte, PA 16823  
Telephone: (814) 359-5133  
Fax: (814) 359-5175

Pennsylvania Environmental Defense Foundation

Charles Marshall  
32 Wistar Road  
Paoli, PA 19301

HMA, PFBC and PEDF shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above addresses.

10. **Severability.** The paragraphs of this Consent Order and Agreement shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

11. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

12. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

13. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

14. **Titles.** A title used at the beginning of any paragraph of this Consent Order and Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

15. **Decisions under Consent Order.** Except as set forth in Paragraph 3(l), above, any decision which the Department makes under the provisions of this Consent Order and Agreement is intended to be neither a final action under 25 Pa. Code §1021.2, nor an adjudication under 2 Pa. C.S. §101. Any objection which HMA, PFBC and PEDF may have to the decision will be preserved until the Department enforces this Consent Order and Agreement.

16. **Resolution.** Attached hereto as Appendix A is a resolution of the Board of Supervisors of HMA authorizing its signatories below to enter into this Consent Order and Agreement on its behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of HMA, PFBC and PEDF certify under penalty of law, as provided by 18 Pa. C.S. §4904, that they are authorized to execute this Consent Order and Agreement on behalf of HMA, PFBC and PEDF; that HMA, PFBC and PEDF consent to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that HMA, PFBC and PEDF hereby knowingly waive their rights to appeal

this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. §7514; the Administrative Agency Law, 2 Pa. C.S. §103(a) and Chapters 5A and 7A; or any other provision of law. Signature by HMA's, PFBC's and PEDF's attorneys certify only that the agreement has been signed after consulting with counsel.

FOR HOUTZDALE MUNICIPAL AUTHORITY:

Donald Ross  
Donald Ross, Jr.

Merle Hayward  
Merle Hayward

John Carfley  
John Carfley  
Attorney for Houtzdale Municipal Authority

FOR THE PENNSYLVANIA FISH & BOAT COMMISSION:

Peter A. Colangelo  
Peter A. Colangelo  
Executive Director

Laurie E. Shepler  
Laurie E. Shepler  
Assistant Counsel

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Larry T. Weifer  
Larry T. Weifer  
Environmental Program Manager  
Water Supply Management

Amy Ershler  
Amy Ershler  
Assistant Counsel

FOR THE PENNSYLVANIA ENVIRONMENTAL DEFENSE FUND:

Charles Marshall Fred Johnson  
Charles Marshall Fred Johnson  
Chairman

John E. Childe  
John E. Childe  
Attorney for the Pennsylvania Environmental Defense Fund

EXHIBIT B  
MONITORING PROGRAM

Houtzdale Municipal Authority proposes to continue its monitoring plan within the Mountain Branch-Trim Root Watershed as part of an agreement among the Pennsylvania Fish and Boat Commission, PA Department of Environmental Protection and Houtzdale Municipal Authority. This plan includes a number of elements that are part of its original monitoring plan in support of its groundwater and surface water withdrawals from the Mountain Branch and Trim Root Watersheds.

**BACKGROUND STREAM GAUGING STATION**

In order to compare stream-flow data obtained from basins undergoing groundwater development that might experience reductions in base flow with streams not influenced by groundwater withdrawals, the two or more watersheds to be used in such an analysis should have at least similar if not identical precipitation, topographic, landuse, soil, geologic and hydrogeologic conditions. Stream basins used for control purposes are rarely identical. Trout Run, for example, where Pennsylvania American is obtaining water for Osceola Mills is oriented more or less obliquely to the regional bedrock dip of the Elliot Park-Burgoon Aquifer, is entirely wooded and should receive rather similar amounts of precipitation. When compared to Mountain Branch, however, its valley is incised more deeply than Trim Root where water is known to be transported out of this surface basin as groundwater under flow. Water loss by under flow from the Trim Root surface basin along just one mile of channel extending southward from TH-10 to just south of TH-5 is estimated to be 903,700 to 1,883,000 gpd. This is based upon the hydraulic gradient measured within the Elliot Park-Burgoon Aquifer in 1994 prior to well use and estimates of the transmissivity of the Elliot Park-Burgoon Aquifer (25,000 gpd/ft) resulting from controlled pumping tests conducted on TH-4, TH-5 and TH-10.

Prior to groundwater withdrawals from TH-4, 5 and/or 10, on the order of 900,000 gpd to 1.8 mgpd of groundwater that originated within the Trim Root surface water basin flowed under the western surface water basin divide along just one mile length of the valley of Trim Root. This ignores the shallow flow of groundwater that moved down valley within Trim Root stream alluvium, terrace and colluvial deposits where it discharged along the lower reaches of Trim Root and/or into Mountain Branch.

In other words, the yield of this drainage basin expressed in total runoff per unit area of the drainage basin should be less by the amount of water lost from the basin by groundwater under flow. Presently, a significant portion of this water is being captured by the pumping cones of depression caused by the operation of TH-4 and 5 or TH-10.

Trout Run, Moshannon Creek, the headwaters of Mountain Branch and similar other stream valleys incised within the Elliot Park-Burgoon Aquifer all should have higher yields per unit area of drainage basin when compared to Trim Root. Some under flow within alluvium occurs within these drainage basins.

One way to minimize a miss match in the selection of drainage basins in such an analysis is to install a stream gauge on Trim Root up stream from areas of possible pumping influences from TH-4, 5 and/or 10. Two locations south of TH-5 but north of the State Gameland were selected by HMA and PFBC where such a gauge might be located. R. R. Parizek's inspection of this segment of Trim Root during this most recent drought (1998) revealed that the channel contained water at the proposed gauging site. The stream segment north of this reach that extended to Sand Spring just West of TH-5 was dry throughout this recent drought. This is the same segment of Trim Root that goes dry each summer and early fall. It was dry even before TH-4 and 5 were placed into service.

A weir at this location could be used to obtain baseline, or control data. It is accessible by logging roads and has a suitable channel cross-section where a weir could be constructed at limited cost and difficulty. Monitoring flows at this site within Trim Root will be at the discretion of the Authority.

#### PRECIPITATION

A precipitation gauging station was established near the Houtzdale Municipal Authority office and water treatment plant. This station was put into operation in January 1998.

The production gauging procedures will be continued on a daily basis at least during the next five years of study. This rain gauge is located approximately 1.1 miles from the staff gauge on Mountain Branch and 1.7 miles from the staff gauge on Trim Root. It is about 4.0 miles from the staff gauge on Moshannon Creek.

#### STREAM GAUGE ON TRIM ROOT

A rectangular weir will be constructed on Trim Root below the access road that leads to the well field along Trim Root and above its confluence with Mountain Branch. The site is below the existing staff gauge on Trim Root and far enough above the confluence with Mountain Branch to avoid backup water influences during flood events (Exhibit A).

A continuous recording station is to be established at this weir site. The final design of the weir and recording station will be submitted to the Pennsylvania Fish and Boat Commission for their approval prior to construction. The design must provide reliable and accurate measurements of low flows, ensure an aerated nap below a water tight weir while at the same time not interfering with native fish migration during the spawning season. A rectangular weir is planned to accommodate high flows known to occur within the watershed. This will protect the weir against flood damage. A continuous recording meter will be included in a protective housing. The design of this gauging station will be done in cooperation with UniTec Consulting Engineers, Inc.

#### PRODUCTION WELLS

The Houtzdale Municipal Authority measures and records water levels within its three production wells on a daily basis as required by its withdrawal permit from the Susquehanna River Basin Commission. These levels are measured automatically and recorded by computer at the Water Treatment Plant.

Water levels will be measured on a daily basis in TH-4, 5 and 10 whether or not pumps are in operation. These measurements will be taken automatically and stored in the Houtzdale Municipal Authority computer data base.

#### MONITORING WELLS

The Houtzdale Municipal Authority constructed four monitoring wells within the Mountain Branch Watershed (Exhibit A). These include MW-1, 2, 3A and 4. Depths to water will be measured manually using an electric water level depth indicator on a monthly basis during the next five year period. The well casings have been surveyed by elevation and location. The water level measurement point for these monitoring wells is the top of the well casing in each instance. After this five year period of observing the Houtzdale Municipal Authority will monitor water levels in these wells quarterly unless other factors justify more frequent readings. For example, this might include evidence of AMD migration.

Water samples will continue to be collected on a quarterly basis and analyzed for AMD indicators. These include the following:

Specific Conductance  
pH  
Sulfate  
Iron

## TEST WELLS

Four test wells are present within the Trim Root Watershed. These include TH-1, 2, 3 and 6 (Exhibit A). The Houtzdale Municipal Authority will continue to measure water levels within these wells on a monthly basis during the next five year period. Following this period of observation, the Authority may revert to its quarterly monitoring schedule. These test wells have been surveyed by location and elevation. The top of casing is the reference point from which manual depths to water are measured.

TH-1, 2 and 3 have restrictions below their casings. The borehole walls either collapsed below the casings or vandals threw debris in these wells before locks were provided for well caps. Deep water levels induced by prolonged pumping of TH-4 and/or TH-5 cannot be determined for these wells once pumping levels fall below the level of these obstructions.

The Houtzdale Municipal Authority will clean out these obstructions and set P.V.C. liners that will help maintain these as more reliable observation wells. The Houtzdale Municipal Authority will allow PFBC staff access to the test wells.

## SPRINGS

A number of springs, seeps and wetlands are present within the Trim Root Watershed. These vary in their flow characteristics with season of the year and possibly with groundwater withdrawals by TH-4, 5 and/or 10. These seeps and springs are shown on Exhibit A and are named on both Exhibit A and in Table 1. Observations that were made and recorded for these springs over the years refer to these informal names.

The Houtzdale Municipal Authority will construct four weirs on the principal springs of concern. A V-notch weir for the North Spring (just north of MW-1), a rectangular weir on the common channel of the North and South Clubhouse Turn Springs that are located just North of TH-10, a rectangular weir for two springs located just north of TH-1 herein named the TH-1 North and South Springs, and a rectangular weir on the TH-5 North Spring.

Staff from the Houtzdale Municipal Authority will measure the depth of water within V-notches or rectangular notches on a monthly basis during those periods of time set forth in the Consent Order. However, when major changes in well operations are planned, such as a change from the use of one well to the use of another, measurements will be made weekly for one month prior to the change and for two months after the change, schedule permitting. Staff will note whether or not the water is still ponded behind the weirs even when there is no observed flow above the weir and when springs are dry. The Pennington Spring shall be monitored by a weir to be constructed by Houtzdale Municipal Authority after permission to do so is secured from the Pennington Camp members by PEDF.

The Pennington Camp Spring is nourished by shallow soil seepage within a pool located below a spring box and by water that discharges out of a pipe that is connected to the spring box. A weir will be used to measure the discharge of this spring pursuant to the monitoring method herein established. When and if this pipe ceases to overflow, this will be noted at the time of the site inspection. The presence of water in the spring box and pool below the spring box will be noted when the overflow pipe is dry. Houtzdale Municipal Authority observers will note and record the dates when both the spring box and pool are dry.

#### RECORDS

The Houtzdale Municipal Authority will provide copies of all agreed upon monitoring data to the Pennsylvania Fish and Boat Commission and/or Pennsylvania Department of Environmental Resources on a quarterly basis. The Authority will be free to collect and record any other data that it deems necessary in order to assist in the management of its surface and groundwater supply and distribution system but will not be required to provide these data as part of this agreement.

#### EXPERIMENTAL WELL OPERATION

Staff from Houtzdale Municipal Authority will notify PFBC staff whenever major changes in well operations are planned approximately one month prior to such changes. This notification will allow PFBC staff to collect spring flow and test well data on a more frequent basis than provided in this plan. The purpose of this monitoring will be to document any short term (hourly or daily) changes in flow or well levels. If more frequent changes in operations are deemed necessary by the parties in order to assess potential impacts, experimental changes in well operations will be made outside of the normal operational scheme. Such changes will be made only if they do not interfere with Houtzdale Municipal Authority's ability to serve its customers.

TABLE 1. NAMED SPRINGS, SEEPS, WETLANDS, WELLS AND CHANNELS  
WITHIN THE TRIM ROOT WATERSHED

<u>Informal Name</u>	<u>Name Proposed In The Agreement</u>
Spring north of NW-1	MW-1 North Spring
North Clubhouse Turn Spring	Clubhouse Turn Springs
South Clubhouse Turn Spring	
Hemlock Spring South of TH-10	TH-10 South Hemlock Spring
North Spring and South Spring	North and South Springs
North of TH-1	
Wetland Seep Near Pennington Camp	North Pennington Camp Seep West Pennington Camp Seep

RESOLUTION

BE IT RESOLVED, that the Chairman of the Board of Directors of the Houtzdale Municipal Authority and the Secretary of the Houtzdale Municipal Authority are hereby authorized to execute the Consent Order and Agreement presented at the regular meeting of the Authority held on July 13, 1999, in the form affixed hereto in settlement of the appeal filed from the issuance of water supply permit No. 1794502. Said officers are hereby authorized to execute this and all other documents necessary to effectuate this settlement.

HOUTZDALE MUNICIPAL AUTHORITY

BY Donald O'Foss

ATTEST:



Dated: July 13, 1999

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff :  
  
vs. : No. 2003-1895-CD  
  
ERIC O. GILLILAND and BERNADETTE : Document filed:  
GILLILAND, his wife, : MOTION-Leave to  
Defendants : file Amended Complaint  
  
: Filed on behalf of:  
Plaintiff  
  
: Counsel for this Party:  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581  
ID# 17621

FILED

MAR 18 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff  
vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
:

RULE

AND NOW, this 19<sup>th</sup> day of March, 2004, upon consideration  
of the foregoing Motion, a rule is hereby issued upon Defendant to  
Show Cause why the Motion should not be granted. Rule returnable  
the 8 day of April, 2004, for filing written response and  
the 19 day of April, 2004, at 10:00 A M. in Courtroom  
Number 1, Clearfield County Courthouse, Clearfield, Pa. for  
hearing thereon.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO  
DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION, YOU  
MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY  
ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR  
OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED  
THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN  
ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER  
NOTICE FOR RELIEF REQUESTED BY THE MOVANT. YOU MAY LOSE RIGHTS  
IMPORTANT TO YOU.

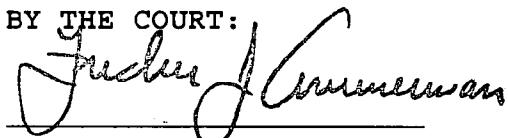
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE  
SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
COURTHOUSE  
CLEARFIELD, PENNSYLVANIA, 16830  
(814) 765-2641

FILED

MAR 22 2004

BY THE COURT:



William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
vs.

MOTION

AND NOW comes the plaintiff, Houtzdale Municipal Authority, (hereinafter HMA) which by and through its attorney, John R. Carfley, Esquire, moves this Court pursuant to Rule 1033 of the Pennsylvania Rules of Civil Procedure for leave to file an Amended Complaint and in support thereof avers as follow:

1. The plaintiff is a municipal authority organized under the laws of the Commonwealth of Pennsylvania, and governed by the Municipalities Authorities Act as amended.
2. Defendant is the owner of certain properties through which Plaintiff and/or its agents must travel to access a wellfield currently under development by the said Authority.
3. In December of 2003, Defendant, without warning and/or provocation, blocked access to the said roadway necessitating the filing of a Petition for Injunctive Relief as well as a civil Complaint to determine ownership rights in and to the said roadway.
4. At the time of the filing of said complaint Plaintiff asserted certain theories under which it claimed an easement and/or ownership rights in and to the said roadway including but not limited to an easement by prescription.

5. Since the date of said filing a search of the records of HMA and/or its predecessor in title has revealed documents which would support a theory of acquisition of title pursuant to the Pennsylvania Eminent Domain Code, 26 P.S. §1-101 et. seq. which Plaintiff has now asserted as an additional count in its Amended Complaint for which it now seeks leave to file.

6. Plaintiff has requested that the Defendant's counsel join in this request and has submitted a consent to counsel but to date has not received any affirmative response with respect thereto.

7. This matter is set for pre-trial conference on May 27, 2004, and for non-jury trial on June 9, 2004.

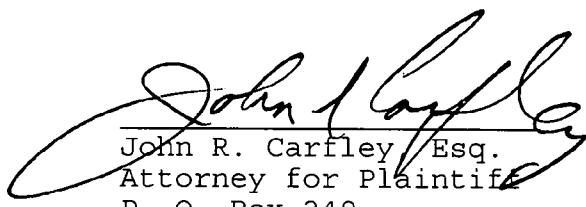
8. Sufficient time exists between the filing of this Amended complaint and the date of trial to permit defendant to review, answer and engage in discovery should they so choose without any prejudice to their claim and/or defense.

9. The theories asserted by Plaintiff were either initially raised in the original Complaint filed or were addressed at the two hearings held on the Preliminary Injunction so said theories are not novel but rather have been revealed to counsel and have been within the contemplation of defense counsel.

10. It is believed and therefore averred that the theory now asserted by the Plaintiff may be dispositive of the issues pending before this court and may further result in judicial economy in that the court may be able to rule on this matter without the necessity of extensive testimony pertaining to these matters or based upon the stipulation of counsel and/or on a case stated basis

with supporting briefs.

WHEREFORE, Plaintiff requests this Honorable Court to enter an Order granting Plaintiff leave to file its Amended Complaint or in the alternative to issue a Rule Returnable directed to the Defendant to appear and show cause why said relief should not be granted.



John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: March 17, 2004

OP

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HOUTZDALE MUNICIPAL  
AUTHORITY

-vs-

..... No. 03-1895-CD

ERIC O. GILLILAND and  
BERNADETTE GILLILAND

O R D E R

NOW, this 19th day of April, 2004, the Court  
noting that no one has appeared to object to the  
Plaintiff's request to amend its complaint, the said  
request to file an amended complaint is hereby granted.  
The Court further notes that counsel for the Plaintiff has  
certified that counsel for the Defendants has been in  
possession of the proposed amended complaint since at least  
March 17, 2004. Therefore, it is the further ORDER of this  
Court that the Plaintiff file a responsive pleading by no  
later than May 3, 2004.

BY THE COURT,



President Judge

FILED

APR 20 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

**CIVIL ACTION - LAW**

## HOOTZDALE MUNICIPAL AUTHORITY

**Plaintiff/Petitioner**

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

### Defendants/Respondents

\* No. 2003-1895-CD

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\*  
\*  
\* TYPE OF CASE: Civil Action

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\*  
\*  
\*  
\* TYPE OF PLEADING: Defendants'  
\* Answer to Plaintiff's Amended  
\* Complaint  
\* FILED ON BEHALF OF:  
\* DEFENDANTS

\*  
\*  
\* ATTORNEY FOR DEFENDANTS:  
\* David C. Mason, Esquire  
\* Supreme Court ID #39180  
\* DAVID C. MASON LAW OFFICE  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240

\*  
\* ATTORNEY FOR PLAINTIFF:  
\* John R. Carfley, Esquire  
\* Supreme Court ID #17621  
\* P. O. Box 249  
\* Philipsburg, PA 16866  
\* (814) 342-5581

FILED

MAY 04 2004

William A. Shaw  
• Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants/Respondents \*

\*

\* No. 2003-1895-CD

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**DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

AND NOW come the Defendants above named, by and through their attorney, DAVID C. MASON, and file this Answer to the Plaintiff's Amended Complaint and in support thereof aver as follows:

1. **ADMITTED.**

2. **ADMITTED.**

3. **ADMITTED.**

4. **ADMITTED.**

5. **ADMITTED.**

6. **DENIED.** Answering Defendants deny the averments contained in Paragraph 6 of the Complaint as after reasonable investigation Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of this averment, therefore, to the extent deemed relevant, strict proof of this averment is demanded at the time of trial. By way of further answer, Answering Defendants deny that said document contains

an abstract of Plaintiff's title, and strict proof is demanded at the time of trial.

**7. ADMITTED.**

**8. DENIED.** Answering Defendants deny the averments contained in Paragraph 8 of the Complaint as after reasonable investigation Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of this averment, therefore, to the extent deemed relevant, strict proof of this averment is demanded at the time of trial.

**9. DENIED.** Answering Defendants deny the averments contained in Paragraph 9 of the Complaint as after reasonable investigation Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of this averment, therefore, to the extent deemed relevant, strict proof of this averment is demanded at the time of trial.

**10. DENIED.** Answering Defendants deny the averments contained in Paragraph 10 of the Complaint as after reasonable investigation Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of this averment, therefore, to the extent deemed relevant, strict proof of this averment is demanded at the time of trial. By way of further answer, please see New Matter.

**11. DENIED.** The averments contained in paragraph 11 of Plaintiff's Complaint are denied generally, and specifically as follows:

**a. DENIED.** It is denied that the roadway to the Moshannon Creek well field has continued in existence and has been utilized by the general public and by HMA, and others, as, after reasonable investigation, Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of this averment, therefore, to the

extent deemed relevant, strict proof of this averment is demanded at the time of trial.

b. **DENIED.** It is denied that said roadway was used as early as 1912 to the present date as, after reasonable investigation, Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of this averment, therefore, to the extent deemed relevant, strict proof of this averment is demanded at the time of trial.

c. **DENIED.** It is denied that the roadway is depicted on aerial photography dating from the 1950's and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

d. **DENIED.** It is denied that the roadway is locatable [sic] on modern photography from the late 90's and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

e. **DENIED.** Further, it is denied that the said roadway over which Plaintiffs claim a right of ingress and egress is in the same location as earlier roadways.

12. **DENIED.** The averments contained in paragraph 12 are denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer, it is strictly denied that Plaintiff began using this roadway between 1912 and 1920.

13. **DENIED.** The statements contained in Paragraph 13 of Plaintiff's Amended Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required. To the extent a response is deemed necessary, the averments are specifically denied as follows:

a. "...without legal basis" – Defendants strictly deny that their actions are without legal basis as the Defendants are the title owners of the lands and the Plaintiff's own pleadings acknowledge that the defendants are the owners of the lands in question..

b. "...without color of title" -Defendants strictly deny that the actions they have taken are without color of title as they are the title owners of the lands in question and the Plaintiff's pleadings admit these facts.

c. "...prejudicial to all customers of the HMA as well as the general public." The authority is not drawing water from the premises which Plaintiff claims is serviced by a road or right-of-way on the lands of the Defendants, and the Authority has a means of access directly from the lands they own to a publicly maintained thoroughfare. Additionally, the general public is not a party to the present action, is unrepresented, and any interests put forth by the HMA on behalf of the "general public", which interest is specifically denied by answering Defendants, is immaterial and irrelevant to the claims set forth by the HMA.

**14. ADMITTED.**

**15. DENIED.** Plaintiff's statements which appear in the past perfect tense that the Plaintiff "... has constructed a water line ..." is denied. While a portion of a pre-existing water line may exist on lands of the Defendants, said personality ceased to be a water line upon the termination of service of this well field and the removal of a section of the former pipeline. It is denied that Plaintiff or its predecessors secured easements for a roadway to access said water line and water source and strict proof thereof is demanded at the time of trial. By way of further answer please see New Matter.

**16. DENIED.** Plaintiff's statements which appear in the past perfect tense that the Plaintiff "... has utilized the existing roadway ..." is denied. While it seems apparent that Plaintiff previously used this roadway for access, such access was terminated and ended, suspended or abandoned when the water transmission line was disassembled.

**17. ADMITTED.**

18. **DENIED.** The averments contained in paragraph 18 of Plaintiff's Amended Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required. To the extent a response is deemed necessary, the averments are specifically denied as follows:

a. The public at large has no interest in this litigation and is unrepresented, and has no interest in Defendants' real estate.

b. It is denied that the Plaintiff or the public at large have acquired an easement by prescription on any portion of Defendants' lands, and particularly, the lands over which the purported roadway travels.

c. By way of further answer, see New Matter.

19. **DENIED.** The averments contained in paragraph 19 of Plaintiff's Amended Complaint are denied to the extent any of the averments imply the Plaintiff's pre-existing right to utilize the said roadway. To that extent, it is specifically denied that the Defendants "... have illegally occupied and have misappropriated the roadway"; it is denied that the roadway was "previously utilized concurrently by the Plaintiff, the Defendants and the general public." By way of further answer, the other averments of Plaintiff's Amended Complaint are denied and strict proof thereof is demanded at the time of trial.

20. **DENIED.** The allegations of paragraph 20 constitute allegations of purpose, mission, and mandate regarding the public personality of the Plaintiff, which characteristics are denied as being irrelevant and immaterial to the private property issues which form the basis of Plaintiff's Complaint. By way of further answer, strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

21. **DENIED.** To the extent paragraph 21 of Plaintiff's Amended Complaint implies

that Plaintiff and the public own any rights in this roadway, said averment is denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

22. **DENIED.** After reasonable investigation, the averment contained in paragraph 22 of Plaintiff's Amended Complaint is denied as answering Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Therefore, said averment is denied and strict proof thereof, to the extent deemed relevant, is demanded a the time of trial.

23. **DENIED.** After reasonable investigation, the averment contained in paragraph 23 of Plaintiff's Amended Complaint is denied as answering Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Therefore, said averment is denied and strict proof thereof, to the extent deemed relevant, is demanded a the time of trial.

24. **DENIED.** By way of further answer, Defendants assert that Plaintiff has the right of condemnation, and a constitutional prohibition against taking private property for public use.

25. **DENIED.** It is denied that the actions of the Defendants are arbitrary and capricious. It is further denied that the members of the general public as a class has any legal rights in this action. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the mandate by the Commonwealth of Pennsylvania to the Plaintiff, and therefore strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. By way of further answer Defendants assert Plaintiff has the right of eminent domain and a constitutional prohibition against taking private property for public purposes without adequate consideration.

COUNT I

ACQUISITION OF RIGHT OF WAY

BASED ON THE THEORY OF EASEMENT BY PRESCRIPTION

26. Paragraphs 1 through 25 are incorporated herein by reference as though fully set forth at length.

27. **DENIED.** The averment contained in paragraph 27 constitutes a mixed statement of law and fact. To the extent a response is required, the averment that this particular roadway has been continually [sic] used by HMA ... and members of the general public is denied and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

28. **DENIED.** The averment contained in paragraph 28 constitutes a mixed statement of law and fact, therefore no response is necessary or required.

29. **DENIED.** The averment contained in paragraph 29 constitutes a mixed statement of law and fact, therefore no response is necessary or required.

30. No response is necessary or required.

31. **DENIED.** It is denied that the general public and the HMA took possession of and utilized the roadway based upon declaration and appropriation dated 1912, and/or formalized by a document dated March 15, 1938. Strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

32. **DENIED.** It is denied that Plaintiff's occupancy and use of the roadway across Defendants' land was continuous, open, visible, notorious, hostile and adverse to Defendants or Defendants' predecessors in title, and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial.

**WHEREFORE**, the Defendants pray your Honorable Court for the entry of an Order entering judgment in favor of the Defendants and against the Plaintiff on Count I of Plaintiff's First Amended Complaint.

## **COUNT II**

### **ACQUISITION OF RIGHT OF WAY BY CONDEMNATION**

#### **• UNDER THE EMINENT DOMAIN CODE 26 P.S. §1-401 ET SEQ.**

33. Paragraphs 1 through 32 are incorporated herein by reference as though fully set forth at length.

34. The statement contained in paragraph 34 constitutes a statement of the law (which statement is not required to be addressed in this pleading) and not an averment of fact. Accordingly, no answer is necessary or required.

35. The statement contained in paragraph 35 constitutes a statement of the law (which statement is not required to be addressed in this pleading) and not an averment of fact. Accordingly, no answer is necessary or required.

36. The statement contained in paragraph 36 constitutes a statement of the law (which statement is not required to be addressed in this pleading) and not an averment of fact. Accordingly, no answer is necessary or required. By way of further answer, after reasonable investigation Answering Defendants are without knowledge or information sufficient to form a belief as to the truth of the factual matters asserted in said paragraph or the accuracy of the documents referenced therein, and strict proof of these averments is demanded at the time of trial.

37. **DENIED.** The statements contained in Paragraph 37 of Plaintiff's Amended

Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required. To the extent a response is necessary the same is denied.

38. **DENIED.** It is denied that the Ramey Water Company occupied this roadway between 1912 and 1920 and strict proof thereof, to the extent deemed relevant, is demanded at the time of trial. It is further denied that such occupancy would have constituted a condemnation as Plaintiff's predecessors in title acquired an easement from Defendants' predecessors in title which easement is dated January 2, 1920, and attached to Plaintiff's Amended Complaint as Exhibit "D", incorporated herein by reference. It is specifically denied that Plaintiff acquired any rights to roadway other than the aforementioned easement agreement. It is further denied that Plaintiff acquired any additional interest in said land which said land "... which right-of-way was recognized and extended . . .". It is further denied that the Plaintiff or "other entities" have acquired any interest in the subject lands.

39. The statements contained in Paragraph 39 of Plaintiff's Amended Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required.

40. The statements contained in Paragraph 40 of Plaintiff's Amended Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required.

41. **DENIED.** Defendants deny that there was a taking of the right-of-way in 1912. Defendants further deny that this event would have "began the running of time on any claim". The balance of the averments contained in paragraph 41 are conclusions of law not averments of fact and strict proof thereof, to the extent deemed relevant, is demanded

at the time of trial.

42. The statements contained in Paragraph 42 of Plaintiff's Amended Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required.

43. **DENIED.** It is strictly denied that the Defendants or their predecessors in title had actual notice of the condemnation or taking, said condemnation or taking being strictly denied. Strict proof of the taking and of the Defendants' actual notice of the taking is demanded at the time of trial.

44. The statements contained in Paragraph 44 of Plaintiff's Amended Complaint constitute conclusions of law, not averments of fact, and therefore, no response is necessary or required.

**WHEREFORE**, Defendants pray your Honorable Court for the entry of an Order dismissing Count II of Plaintiff's First Amended Complaint and entering judgment in favor of the Defendants and against the Plaintiff.

### **COUNT III**

#### **MONETARY DAMAGES FOR LEGAL FEES AND COSTS**

45. Paragraphs 1 through 44 are incorporated herein by reference as though fully set forth at length.

46. **DENIED.** The averments contained in paragraph 46 constitute conclusions of law, not averments of fact, and therefore no response is necessary or required.

47. **ADMITTED.**

48. No response is necessary or required.

49. No response is necessary or required.

50. No response is necessary or required.

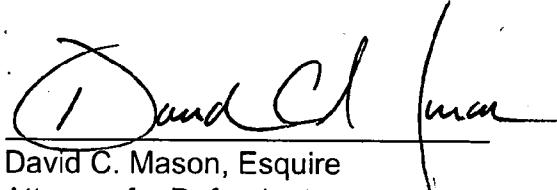
51. **DENIED.** Strict proof is demanded at the time of trial.

52. The averments contained in paragraph 52 constitute conclusions of law, not averments of fact, and therefore no response is necessary or required.

**WHEREFORE**, Defendants pray your Honorable Court for the entry of an Order dismissing Count III of Plaintiff's First Amended Complaint and entering judgment in favor of the Defendants and against the Plaintiff.

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Esquire  
Attorney for Defendants

C:\Office\COURT\GILLILAND\ANSWERTOAMENDEDCOMP042904.wpd\blb

**VERIFICATION**

We certify that the facts set forth in the foregoing ANSWER CONTAINING NEW MATTER are true and correct to the best of our knowledge, information and belief. This verification is made subject to the penalties of 18 PA. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 5-3-2004

By:

Eric O. Gilliland

DATED: 5-3-2004

By:

Bernadette Gilliland

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

## CIVIL ACTION - LAW

## HOUTZDALE MUNICIPAL AUTHORITY

**Plaintiff/Petitioner**

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

### Defendants/Respondents

\* TYPE OF PLEADING: Certificate  
\* of Service

\* FILED ON BEHALF OF:  
\* DEFENDANTS

\* ATTORNEY FOR DEFENDANTS:

\* David C. Mason, Esquire  
\* Supreme Court ID #39180  
\* DAVID C. MASON LAW OFFICE  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240

\* ATTORNEY FOR PLAINTIFF:

\* John R. Carfley, Esquire  
\* Supreme Court ID #17621  
\* P. O. Box 249  
\* Philipsburg, PA 16866  
\* (814) 342-5581

FILED

MAY '04 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

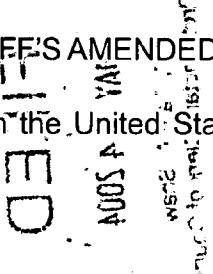
Defendants/Respondents

\*  
\* No. 2003-1895-CD  
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**CERTIFICATE OF SERVICE**

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

John R. Carfley, Esquire  
P. O. Box 249  
Philipsburg, PA 16866



MASON LAW OFFICE

DATED:

By:

David C. Mason, Esquire  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

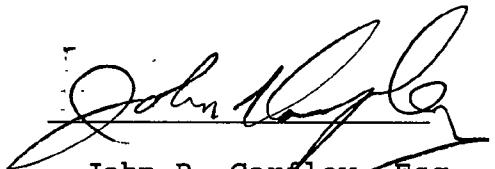
vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Motion for Summary Judgment filed on behalf of Plaintiff by by placing the same in the United States Mail, regular service to the following attorneys and parties of record by first class U.S. mail, postage prepaid on May 7, 2004.

David L. Mason, Esq.  
P. O. Box 28  
Philipsburg, Pa., 16866



John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
Attorney for Plaintiff

FILED

MAY 07 2004



William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

OK

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff :  
  
vs. : No. 2003-1895-CD  
  
ERIC O. GILLILAND and BERNADETTE : Document filed:  
GILLILAND, his wife, : MOTION FOR SUMMARY  
Defendants : JUDGMENT  
  
: Filed on behalf of:  
Plaintiff  
  
: Counsel for this Party:  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581  
ID# 17621

FILED

MAY 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

7

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff  
vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
:

RULE

AND NOW, this 11<sup>th</sup> day of May, 2004, upon consideration  
of the foregoing Motion, a rule is hereby issued upon Defendant to  
Show Cause why the Motion should not be granted. Rule returnable  
the 24 day of May, 2004, for filing written response and  
the 27 day of May, 2004, at 9:00 A.M. in Courtroom  
Number 1, Clearfield County Courthouse, Clearfield, Pa. for  
hearing thereon.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO  
DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION, YOU  
MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY  
ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR  
OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED  
THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN  
ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER  
NOTICE FOR RELIEF REQUESTED BY THE MOVANT. YOU MAY LOSE RIGHTS  
IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE  
SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
COURTHOUSE  
CLEARFIELD, PENNSYLVANIA, 16830  
(814) 765-2641

FILED

MAY 11 2004

William A. Shaw  
Prothonotary/Clerk of Courts  
3 CENT TO ATTY

BY THE COURT:  


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :

MOTION FOR SUMMARY JUDGMENT

AND NOW comes the plaintiff, the Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esquire, files this Motion for Summary Judgment and in support thereof avers as follow:

1. The plaintiff is the Houtzdale Municipal Authority, (hereinafter HMA), a municipal authority organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located in Houtzdale, Clearfield County, Pennsylvania.

2. The defendants are Eric O. Gilliland and Bernadette Gilliland, his wife, (hereinafter Gillilands) of 1705 Dry Hollow Road, Warriors Mark, Pennsylvania.

3. On or about March 17, 2004, Plaintiff filed an Amended complaint in the above matter alleging inter alia that the said Authority was the owner of, or had acquired certain rights in and to a roadway extending over and through properties owned by the Defendants which provided access to an area known as the Moshannon Creek Watershed. The specific averments of said Amended Complaint as well as all exhibits are incorporated herein by reference as fully as though set forth at length.

4. On or about May 3, 2004, Defendants filed their Answer to the Amended Complaint thus placing the matter at issue for resolution by this court.

5. This matter is now scheduled for pre-trial conference on May 27, 2004, with a non-jury trial scheduled for June 9, 2004.

6. Municipal Authorities are specifically granted the power to condemn pursuant to the Municipality Authorities Act of 1945, May 2, P.L. 382, § 4, §11, 53 P.S. 306(1), 314 (hereinafter the Act).

7. Count II of Plaintiff's Amended Complaint states a cause of action for the acquisition of rights in and to the said roadway hereinabove described based upon HMA's power of condemnation as set forth in the Act and under the Pennsylvania Eminent Domain Code, as amended, specifically 26 P.S. §1-401 et. seq.

8. Plaintiff bases its chain of title confirming ownership of certain properties adjacent to the Moshannon Creek by virtue of that Deed from the Ramey Water Company which is attached to Plaintiff's Amended Complaint as Exhibit C.

9. Plaintiff further alleges that it acquired a right of way on January 2, 1920, from the Kittanning Coal Company permitting the said Authority to construct a pipeline over and across properties now owned by the Defendants in the vicinity of the Moshannon Creek, all of which is set forth in the recorded Agreements attached to Plaintiff's Amended Complaint as Exhibits D and E.

10. Plaintiff further relies on ancient documents abstracted from the records of its predecessor in interest, the Ramey Water

Company, which deal with actions taken by the Ramey Water Company at a stockholders' meeting on June 11, 1912, wherein a resolution was adopted permitting the appropriation of rights of ways, lands, and other resources in order to draw water from the Moshannon Creek for distribution and use throughout the system.

11. The aforementioned documents are attached to Plaintiff's Amended Complaint as Exhibit F and further confirm the appropriation of waters from the Moshannon Creek water supply and the actual taking of water from that source in the year 1912.

12. Defendants, in their Answer to Plaintiff's Amended Complaint, acknowledge Plaintiff's past usage of the contested roadway in the following respects: "while it seems apparent that Plaintiff previously used this roadway for access, such access was terminated and ended, suspended or abandoned when the water transmission line was disassembled". (Reference Paragraph 16 of Defendants' Answer)

13. Plaintiff attached to its Amended Complaint as Exhibit G a Consent Order and Agreement entered into by HMA with the Department of Environmental Protection specifically outlining the future development and use of the Moshannon Creek Watershed and the necessity for HMA to develop this facility as a surface source and wellfield within a set time period in order to take advantage of the water allocation permit issued by the Department of Environmental Protection for the Moshannon Creek area. (See Paragraph 3 subparagraph (i), Page 7 of the Consent Order attached to Plaintiff's Amended Complaint as Exhibit G).

14. HMA has secured the extension of the water allocation permit for Moshannon Creek during those periods required for the approval of its feasibility study and during the acquisition of lands and the construction of wells and a transmission system for utilization of these resources.

15. It is believed and therefore averred that water has been appropriated from Moshannon Creek for use throughout the system from 1912 until the present.

16. HMA's records indicate that one production well was drilled and capped in the Moshannon Creek Watershed in the early 1990's; additional production wells and monitoring wells have been drilled in this area beginning in the year, 2000.

17. It is Plaintiff's contention that water was appropriated and taken from the Moshannon Creek as early as 1912 and was thereafter continually taken at a state specified rate until 1995 when the existing Mountain Branch Watershed was placed on line and began to provide treated water to the communities in the Moshannon Valley area, and thereafter said facility has been used as an interim source of water for the system "as needed".

20. At all times relevant hereto the Plaintiff has coordinated with DEP in the development of the Moshannon Creek surface source and wellfield in order to expand the capability of HMA both quantitatively and qualitatively.

21. Defendants acknowledge that the Plaintiff acquired a right of way for purposes of extending a pipeline through lands owned by Defendants' predecessors in title at or about the time specified by

the Plaintiff in its Amended Complaint. (See for example Paragraph 25 of Defendant's Answer)

22. Defendants further acknowledge that the Plaintiff, as a municipal authority, has the right of Eminent Domain and may engage in condemnation in order to provide for the health, safety and welfare of its constomers.

23. It is believed and therefore averred that any entity which has the power of Eminent Domain is presumed to have taken possession of any property right it requires by virtue of its right or power of Eminent Domain even if the entity was unable to acquire title to the property rights or other interest by adverse possession.

24. It is also well settled that said taking or condemnation occurs with the initial entry of the entity upon the property for purposes consistent with its governmental mandate and authority.

25. In the case at bar Plaintiff, through its available records, establishes an appropriation and taking from Moshannon Creek of water resources as early as June 11, 1912, at which time, by necessity, it was required to utilize an access way over and across properties abutting the Moshannon Creek in order to construct the pipeline and provide access to the intake located on the Moshannon Creek.

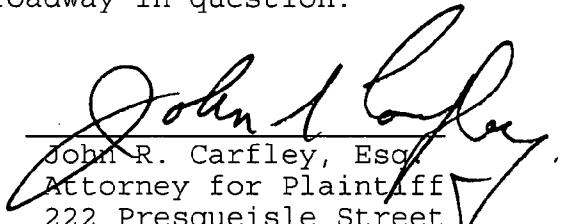
26. It is believed and therefore averred that the Plaintiff, therefore, acquired rights consistent with an ownership interest and/or right of way over and across the said roadway by virtue of its power of condemnation.

27. It is further believed and therefore averred that the pipeline right of way granted to Ramey Water Company by Kittanning Coal Company and the further rights therein specified to appropriate and draw water from the Moshannon Creek to transport through this distribution line carried with it the right to access the intake on Moshannon Creek through existing roadways or roadways to be constructed by the Water Authority and that these implied rights extend to HMA as the legitimate successor in interest to Ramey Water Company.

28. With respect to the acquisition of title and/or use of the roadway by condemnation there is no material issue of fact which needs or should be submitted to the court for determination.

29. Summary judgment may be granted where the moving party is entitled to judgment as a matter of law and where no material issue of fact remains for determination.

WHEREFORE, Plaintiff requests that judgment be entered in favor of the Plaintiff and against the Defendants on the issue of acquisition of title to the roadway in question.



John R. Carfley, Esq.  
Attorney for Plaintiff  
222 Presqueisle Street  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: May 6, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

VS.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants/Respondents

\*

\* No. 2003-1895-CD

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\* TYPE OF CASE: Civil Action

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\* TYPE OF PLEADING: Defendants'  
\* Reply to Plaintiff's Motion for Summary  
\* Judgment

\*

\* FILED ON BEHALF OF:

\* DEFENDANTS

\*

\* ATTORNEY FOR DEFENDANTS:

\* David C. Mason, Esquire  
\* Supreme Court ID #39180  
\* DAVID C. MASON LAW OFFICE  
\* P.O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240

\*

\* ATTORNEY FOR PLAINTIFF:

\* John R. Carfley, Esquire  
\* Supreme Court ID #17621  
\* P. O. Box 249  
\* Philipsburg, PA 16866  
\* (814) 342-5581

FILED

MAY 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

\*

\* No. 2003-1895-CD

Plaintiff/Petitioner

\*

vs.

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Defendants/Respondents \*

\*

**DEFENDANTS' REPLY TO PLAINTIFF'S**

**MOTION FOR SUMMARY JUDGMENT**

AND NOW, come the Defendants Eric O. Gilliland and Bernadette Gilliland, his wife, by and through their attorney, David C. Mason, Esquire, who files this Reply to Plaintiff's Motion for Summary Judgment and in support thereof avers as follows:

1. Plaintiff filed an Amended Complaint and included therein Count II alleging a condemnation and taking occurred in 1912 (Plaintiff's amended complaint, paragraphs 38, 41, and 42).
2. Defendants' Answer to Plaintiff's Complaint denied the taking on the basis of various legal and factual defenses.
3. Plaintiff as the moving party has the burden of proving that no genuine issue of material fact exists as to Plaintiff's theory of recovery, and, that the moving party is entitled to judgment in its favor as a matter of law.

4. The filing of a Motion for Summary Judgment is controlled by Pa. R.C.P. 1035.1, et seq.

5. Defendants' Answer denies the factual averments in Plaintiff's Complaint, and Plaintiff has not offered any affidavits, deposition testimony, or other documents in support of its Motion for Summary Judgment. Neither has it offered any citation to statutory or decisional authority for Plaintiff's assertion that a *de facto* taking took place.

6. The official note to Pa. R.C.P. 1035.2 contains the following passage:

*Oral testimony alone, either testimonial affidavit or deposition, of the moving party or the moving parties' witnesses, even if uncontradicted, is generally insufficient to establish the absence of a genuine issue of material fact. See Nanty-Glo Borough v. American Surety Company, 309 Pa. 236, 163 A. 523 (1932). [Other citation omitted].*

7. In Stern v. Prudential Financial, Inc., 836 A.2d 953 (Nov. 12, 2003), the Superior Court restated the Nanty-Glo Rule, "that Summary Judgment may not be had where the moving party relies exclusively upon oral testimony, either through testimonial affidavit or deposition, to establish absence of a genuine issue of material fact." The Stern opinion acknowledged that the Superior Court has recently been chastised for failure to follow the Nanty-Glo Rule in Valles v. Albert Einstein Med. Center, 569 Pa. 542, 805 A.2d 1232.

8. Summary judgment is not to be lightly entered, and should be granted only when the case is clear and free from doubt. In passing upon a Motion for Summary Judgment the court must view the record in the light most favorable to the non-moving party, and any doubt must be resolved against the moving party. Garcia v. Savage, 402 Pa. Super 324, 586 A.2d 1375 (1991). Even the uncontradicted testimony of a defendant moving for summary judgment will not afford sufficient basis for granting summary judgment since the credibility of his testimony will be for the jury. Post v. Daud, 116 Pa. Commonwealth 114, 541 A.2d 56 (1988).

**WHEREFORE**, Defendants pray your Honorable Court for the entry of an Order dismissing Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

MASON LAW OFFICE

By:

David C. Mason, Esquire  
Attorney for Defendants

FILED NO

31874

cc

MAY 24 2004

447

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff/Petitioner

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants/Respondents

- \* TYPE OF CASE: Civil Action
- \* TYPE OF PLEADING: Certificate of Service
- \* FILED ON BEHALF OF: DEFENDANTS
- \* ATTORNEY FOR DEFENDANTS:
  - \* David C. Mason, Esquire
  - \* Supreme Court ID #39180
  - \* DAVID C. MASON LAW OFFICE
  - \* P.O. Box 28
  - \* Philipsburg, PA 16866
  - \* (814) 342-2240
- \* ATTORNEY FOR PLAINTIFF:
  - \* John R. Carfley, Esquire
  - \* Supreme Court ID #17621
  - \* P. O. Box 249
  - \* Philipsburg, PA 16866
  - \* (814) 342-5581

FILED

MAY 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

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\* No. 2003-1895-CD

Plaintiff/Petitioner

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CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of DEFENDANTS' REPLY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

John R. Carfley, Esquire  
P. O. Box 249  
Philipsburg, PA 16866

DATED:

5-21-04

By:

  
David C. Mason, Esquire  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff  
vs. : No. 2003-1895-CD  
ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife, :  
Defendants :

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF :

Personally appeared before me the undersigned, Peter J. Carfley, Esquire, who being duly sworn deposes and states as follows:

1. I am an attorney duly licensed to practice law in the Commonwealth of Pennsylvania and in that capacity have been retained to act as the solicitor for the Houtzdale Municipal Authority, a municipal corporation, organized under the laws of the Commonwealth of Pennsylvania with its principal office located at Houtzdale, Pennsylvania.

2. The Houtzdale Municipal Authority in order to fulfill its municipal mandate to provide a qualitative and quantitative water source for consumption by the public were compelled to institute suit against the Defendants in the above matter in order to insure its continued ability to assess a public water supply over a previously acquired right of way.

3. On February 11, 2004, and April 19, 2004, hearings were held relative to the permanency of an injunction to insure HMA's access to the roadway and to its surface source and wellfield located on the Moshannon Creek.

4. Attached hereto are copies of the transcripts of those hearings for consideration by the court in Plaintiff's Motion for Summary Judgment and all other matters pertinent to this case.

Peter J. Carfley

Sworn to and subscribed  
before me this 26<sup>th</sup> day of  
May, 2004.

William A. Shaw

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

FILED

MAY 26 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

FILED

MAY 26 2004

HOUTZDALE MUNICIPAL  
AUTHORITY

\*  
\*  
\*

Plaintiff,

\*

William A. Shaw  
Prothonotary/Clerk of Courts

-vs-

No. 03-1895-CD

ERIC O. GILLILAND and BERNADETTE \*  
GILLILAND, his wife,  
Defendants.

\*

**PETITION TO ENFORCE THE COURT'S PRIOR ORDER**

AND NOW COMES, the Plaintiff, Houtzdale Municipal Authority, who by and through its counsel, John R. Carfley, Esquire, file the foregoing Petition to Enforce the Court's Prior Order, and in support avers as follows:

1. Petitioner/Plaintiff is the Houtzdale Municipal Authority (hereinafter "HMA"), a municipal authority organized under the laws of the Commonwealth of Pennsylvania, with its principal place of business located in Houtzdale Borough, Clearfield County, Pennsylvania.
2. Respondents/Defendants are Eric O. Gilliland and Bernadette Gilliland, his wife, adult individuals residing at 1705 Dry Hollow Road, Warriors Mark, Pennsylvania.
3. On December 31<sup>st</sup>, 2003, this Honorable Court, in response to HMA's Petition for Injunctive Relief, issued an Order instructing the Defendants to refrain from any activity contravening the rights of HMA and to further cease and desist from any activity preventing HMA or its agents from the use of a gravel right-of-way roadway over the Defendants property needed to access HMA's property, pending

a full hearing on the Petition. A true and correct copy of said Order is attached hereto as Exhibit "A".

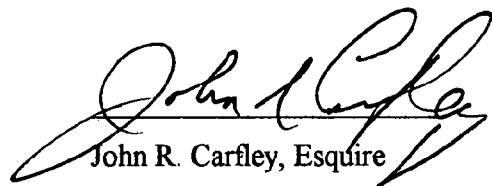
4. On January 14<sup>th</sup>, 2004, HMA through its undersigned counsel informed the Defendants by correspondence that HMA was exercising its rights under Section 409 of Eminent Domain Code and would be entering certain properties owned by the Defendants to further the Moshannon Creek Wellfield Expansion Project. A true and correct copy of said correspondence is attached hereto as Exhibit "B".
5. On February 11<sup>th</sup>, 2004, prior to the completion of the aforementioned hearing to determine the rights under the preliminary injunction, the parties entered into a Consent Order whereby the injunction was lifted; existing HMA timbering operations were to be completed within 30 days, and HMA, its consultants, employees, agents and other governmental authorities "acting in pursuit of the development of the Moshannon Creek Watershed well field" were provided continued access over the right-of-way pursuant to Section 409 of the Eminent Domain Code. A true and correct copy of said Order is attached hereto as Exhibit "C".
6. Since the Consent Order dated February 11<sup>th</sup> was entered into, HMA has fulfilled all of its obligations including the completion of all timbering operations and the limited use of the roadway for development of the Moshannon Creek Wellfield Expansion Project.
7. Within the past month, despite the existence of the Consent Order, the Defendants have once again begun to limit access of the roadway to HMA and its agents in violation of the Court's Order.
8. It is believed and therefore averred that Defendant Eric Gilliland and/or agents acting at his directive made threats directed to HMA personnel and agents seeking to use the roadway to access HMA property with testing equipment, by

threatening to shoot out the tires of any vehicle, which passes over the roadway to reach HMA property. In addition, Mr. Gilliland has threatened to call the Pennsylvania State Police and have anyone arrested seeking to conduct business on behalf of HMA who access the roadway over his property.

9. The daughter of HMA's hydrogeologist, Richard Parizek, herself a professional agent of HMA, despite making a special trip from the State College area to the HMA well sites to test the water produced by said wells, was threatened in such a manner and was unable to complete her testing work on the wells, causing delay and additional expense to the project.
10. These actions by the Defendants are disrespectful of this Honorable Court and in violation of the Consent Order agreed upon by the parties and place Defendants in clear contempt of the Order.

WHEREFORE, Petitioner/Plaintiff the Houtzdale Municipal Authority respectfully requests that this Honorable Court enforce the Consent Order entered into by the parties dated February 11<sup>th</sup>, 2004, allowing unlimited access over the roadway to HMA and its agents in the pursuit of the Moshannon Creek Wellfield Expansion Project and instruct the Defendants that any attempt on their behalf to limit access is a clear violation of the Order and constitutes Contempt of Court.

Respectfully submitted,



John R. Carfley, Esquire  
Attorney for Petitioner

Dated: May 24, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff/Petitioner :  
vs. : No. 2003-1895-CD  
ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife, :  
Defendants/Respondents :

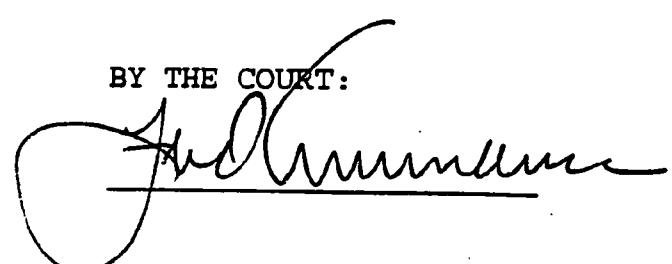
ORDER OF COURT

AND NOW this 31 day of December, 2003, upon consideration of the foregoing Petition for Injunctive Relief, IT IS THE ORDER OF THIS COURT that Respondents appear as directed and show cause why the prayer of said petition should not be permanently granted.

IT IS THE FURTHER ORDER OF THIS COURT that pending a full hearing on the petition for injunctive relief that the said Defendants be and are hereby refrained from any activity contravening the rights of the Plaintiff/Petitioner to utilize the 12 foot unimproved gravel road/easement outlined in yellow on Plaintiff/Petitioner's map affixed to its Petition for Injunctive Relief as Exhibit C and to further cease and desist from any activity preventing the Houtzdale Municipal Authority, its agents, workmen, subcontractors and/or assigns from utilizing the said roadway in a manner consistent with HMA's legal rights therein and to further provide free and unencumbered access to the said Authority to its well fields and landholdings in the Moshannon Creek area all of which is outlined in the Petition and supporting maps and affidavits affixed hereto.

RULE RETURNABLE AND HEARING/CONFERENCE THEREON the 5 day of January, 2004, at 1:30 o'clock P.M. in Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



I hereby certify this to be a true and attested copy of the original statement filed in this case.



JAN 02 2004

Attest:

  
Prothonotary/  
Clerk of Courts

JOHN R. CARFLEY  
ATTORNEY AT LAW  
222 PRESQUEISLE STREET  
P. O. BOX 249  
PHILIPSBURG, PENNSYLVANIA 16866

AREA CODE 814  
TELEPHONE 342-5581  
FAX 342-1127

January 14, 2004

Mr. & Mrs. Eric Gilliland  
548 Hunt Club Drive  
Ginter, Pa., 16651

RE: Houtzdale Municipal Authority

Dear Mr. & Mrs. Gilliland:

The Board of Directors of the Houtzdale Municipal Authority instructed me at the regular monthly meeting on January 13, 2004, to advise you that they intend to exercise their right under Section 409 of the Eminent Domain Code to enter upon certain properties of which you are the designated owner prior to the filing of a Declaration of Taking in order to make studies, preliminary and final surveys, testing, soundings and appraisals for purposes of ascertaining the feasibility of utilizing portions of your property in the water line project designated as the Moshannon Creek Wellfield Expansion Project.

We are providing you with ten (10) days notice prior to the entry on the property which means that you can expect agents from the Authority to begin the entry to conduct these studies, surveys and tests ten (10) days after the service of this document.

Section 409 provides for compensation to the landowner for any actual damages sustained to the property as a result of this entry which damages will be assessed by the Board of View in the same manner as provided in Section 408 of the Eminent Domain Code.

The properties which are currently targeted for entry are those parcels identified as bearing Clearfield County Assessment Numbers 118-L16-172, 118-L16-136, 118-L16-176, 118-M16-176, and 130,M15-5.

Very truly yours,

JOHN R. CARFLEY

JRC:sm

CC: HMA



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

HOUTZDALE MUNICIPAL  
AUTHORITY

-vs-

No. 03-1895-CD

ERIC O. GILLILAND and  
BERNADETTE GILLILAND

O R D E R

NOW, this 11th day of February, 2004, this being the date set for hearing on the Petition for Injunctive Relief; the parties have agreed to the entry of a Consent Order, the terms and conditions of which are as follows:

1. The preliminary injunction previously issued by the Court is dissolved;
2. The Defendants have agreed to permit entry onto the premises which are the subject of this action for timbering operations, said permission to expire thirty (30) days from this date, or Friday, March 12, 2004. Defendants reserve the right to seek compensation from the Plaintiff for this privilege should Defendants prevail in the underlying equity action;
3. The parties agree and recognize that Plaintiff, its consultants, employees, agents, and other governmental authorities acting in pursuit of the development of the Moshannon Creek Watershed well field may

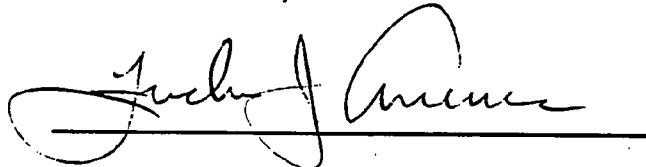
EXHIBIT

C

continue to access the premises of the Defendants, pursuant to Section 409 of the Eminent Domain Code;

4. Access pursuant to Section 409 of the Eminent Domain Code shall, in no way, predetermine Plaintiffs' right to seek ownership of the roadway through civil means as opposed to acquiring ownership to the property by the filing of a Declaration of Taking under Section 401 et. seq. of the Eminent Domain Code.

BY THE COURT,

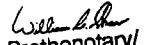


President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

FEB 11 2004

Attest.

  
William L. Brown  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY : :

VS. : NO. 03-1895-CD

ERIC O. GILLILAND and : :

BERNADETTE GILLILAND : :

O R D E R

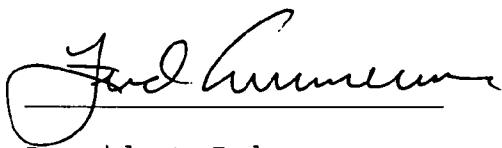
NOW, this 27th day of May, 2004, this being the date set for argument on the Plaintiff's Motion for Summary Judgment; the Court also having been presented with the Petition to Enforce the Court's prior Order; and with the Court noting that trial is scheduled for Wednesday, June 9, 2004, it is the ORDER of this Court as follows:

1. The Plaintiff's Motion for Summary Judgment is hereby denied;

2. The Petition to Enforce the Court's Prior Order is hereby granted. Pursuant to Paragraph 3 of the Court's Order of February 11, 2004, the Defendants, their agents and anyone operating on their behalf shall not restrict further access to the property and road by the Plaintiff, their employees, agents, consultants and designees.

BY THE COURT:

**FILED**

  
\_\_\_\_\_  
President Judge

MAY 27 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff :  
No. 2003-1895-CD  
v. :  
ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife, :  
Defendants :

**PRAECIPE TO ENTER APPEARANCE**

TO THE PROTHONOTARY:

Please enter my appearance on behalf of Defendants, Eric O. Gilliland and Bernadette Gilliland, in the above captioned action.

Respectfully submitted,

REAGER & ADLER, PC

Date: 6/2/04

By:

  
Susan J. Smith, Esquire  
I.D. No. 62531  
2331 Market Street  
Camp Hill, PA 17011  
(717) 763-1383

Attorneys for Defendants

**FILED**

JUN 04 2004

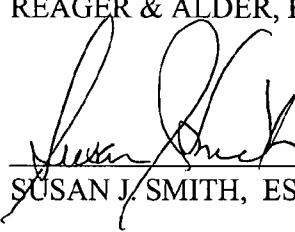
*m/1: 201/w* *8*  
William A. Shaw *bs*  
Prothonotary  
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Copy to CIA

**CERTIFICATE OF SERVICE**

AND NOW, this 2d day of **June, 2004**, I hereby verify that I have caused a true and correct copy of the foregoing Praeclipe for Entry of Appearance to be placed in the U.S. mail, first class, postage prepaid and addressed as follows:

John R. Carfley, Esquire  
P.O. Box 249  
Philipsburg, PA 16866

David C. Mason, Esquire  
P.O. Box 28  
Philipsburg, PA 16866

REAGER & ALDER, PC  
By:   
\_\_\_\_\_  
SUSAN J. SMITH, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

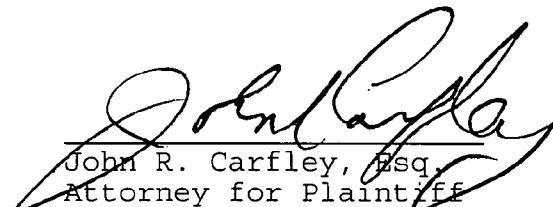
vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :  
vs.

PRAECIPE

TO THE PROTHONOTARY:

PLEASE enter the attached agreement between counsel to be filed along with the Court's Order of June 9, 2004, in partial disposition of the above matter and as an interim settlement thereto.



John R. Carfley, Esq.  
Attorney for Plaintiff  
P. O. Box 249  
Philipsburg, Pa., 16866  
(814) 342-5581

Dated: June 17, 2004

FILED

JUN 17 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY : :

VS. : NO. 03-1895-CD

ERIC O. GILLILAND and : :

BERNADETTE GILLILAND : :

O R D E R

NOW this 9th day of June, 2004, the Court hereby confirms that the Plaintiff has withdrawn its complaint, without prejudice.

BY THE COURT:

/s/ Fredric J. Ammerman

President Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUN 09 2004

Attest.

*William A. Ammerman*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

HOUTZDALE MUNICIPAL AUTHORITY : :

VS. : NO. 03-1895-CD

ERIC O. GILLILAND and : :

BERNADETTE GILLILAND : :

STIPULATION

1. Eric O. Gilliland and Bernadette Gilliland will agree to grant to HMA and its contractors, agents and consultants the right to travel over, across and through the Gilliland land for purposes consistent with water company business, including the monitoring and development of the Moshannon Creek Watershed surface, intake and well sources.

The roadway, for access purposes, will be located closest to the existing pipeline. The right of access shall be until August 31, 2004. Access by HMA to its well field and surface source through any other existing roads located on the Gillilands' property shall be only after consultation with the Gillilands and with their expressed approval.

2. HMA agrees to repair any damage on the roadway on the Gilliland land occasioned as a result of previous timbering activities, as well as anticipated use by heavier vehicles.

3. HMA and the Gillilands, including Eric Gilliland and Bernadette Gilliland, agree that the gate situate near the

ingress to their property shall be secured by one lock, with keys to be provided only to HMA personnel and the aforementioned Gillilands.

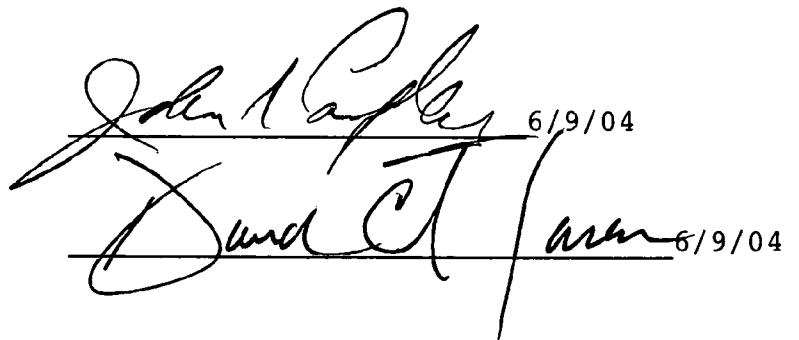
4. HMA and the Gillilands shall meet as often as necessary through the end of June 2004 to determine the standards for the proposed roadway and general location of the proposed roadway and a preliminary estimate of costs for construction.

5. Subsequent to the conclusion of June 2004, the HMA's engineers will design and obtain any necessary permits to allow the road to be constructed. Construction should proceed expeditiously, if this proves to be feasible.

6. HMA shall make every effort to complete the construction of the roadway by August 31, 204, if feasible.

7. Nothing herein previously stated shall prohibit HMA in the event that negotiations shall fail, from instituting a condemnation proceeding under the appropriate statute.

8. For the purposes of this agreement, the Gillilands acknowledge that the installation of GPU facilities along the roadway closest to the proposed pipeline previously referenced in Paragraph 2 is not of major concern; however, they would prefer that it be installed underground.

  
John Ragle 6/9/04  
David C. Farren 6/9/04

William A. Shaw  
Prothonotary

JUN 09 2004

FILED

President Judge

BY THE COURT:

prejudice.

confirms that the Plaintiff has withdrawn its complaint, without  
now this 9th day of June, 2004, the Court hereby

ORDER

BERNADETTE GILLILAND  
ERIC O. GILLILAND and  
VS. : NO. 03-1895-CD  
HOUTZDALE MUNICIPAL AUTHORITY :  
CIVIL DIVISION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

**FILED**  
02/09/2004 *WAS*  
cc: City Court  
cc: City Mason  
JUN 09 2004 *WAS*  
William A. Shaw  
Prothonotary

yes with  
some

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

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\* No. 2003-1895-CD

Plaintiff

\*

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vs.

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**II. WITNESSES:**

1. Eric O. Gilliland
2. Bernadette Gilliland

Defendants reserve the right to supplement this list upon reasonable notice to the Court and Plaintiff's counsel and to call any witnesses which are identified in the Pre-Trial Statement of any other party.

**III. EXHIBITS:**

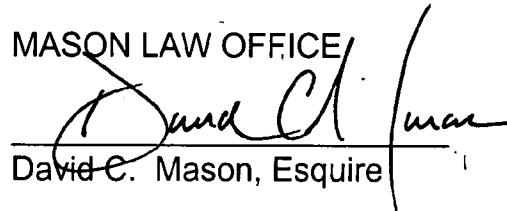
Defendants reserve the right to supplement this list upon reasonable notice to the Court and Plaintiff's counsel and to introduce any exhibits which are identified in the Pre-Trial Statement of any other party.

**IV. EXTRAORDINARY EVIDENTIARY ISSUES:** None anticipated.

**V. ESTIMATED TIME FOR TRIAL:** One (1) day.

Respectfully submitted,

MASON LAW OFFICE

  
David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

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\* No. 2003-1895-CD

Plaintiff/Petitioner

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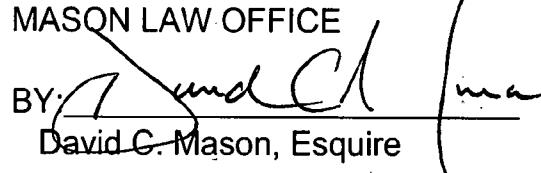
**CERTIFICATE OF SERVICE**

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of a **PRE-TRIAL STATEMENT** filed to the above captioned action, by hand delivering the same to the following:

John R. Carfley, Esquire  
222 Presqueisle Street  
P.O. Box 249  
Philipsburg, PA 16866

DATED: 5-27-04

MASON LAW OFFICE

BY:   
David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

Plaintiff

vs.

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

Defendants

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\* No. 2003-1895-CD

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**RECEIVED**

**MAY 27 2004**

COURT ADMINISTRATOR'S  
OFFICE

**PRE-TRIAL STATEMENT**

**I. FACTS:**

Plaintiffs have filed an action claiming an interest in the lands of the Defendants. The interest they seek is the right of travel over, upon and through lands of the Defendants for ingress, egress and regress. Plaintiff's amended complaint is in three counts. Count I seeks a determination by the Court that the Plaintiffs have acquired an Easement by Prescription through the Defendants' land. Count II seeks a determination by the Court that Plaintiff has the right to travel on Defendants' lands as the result of its condemnation of said lands under the Eminent Domain Code in 1912. The third Count demands the Defendants pay the Plaintiff's legal fees and costs.

As the Court has held two hearings with regard to this matter, further recitation of the facts would be unnecessary.

**II. WITNESSES:**

1. Eric O. Gilliland
2. Bernadette Gilliland

Defendants reserve the right to supplement this list upon reasonable notice to the Court and Plaintiff's counsel and to call any witnesses which are identified in the Pre-Trial Statement of any other party.

**III. EXHIBITS:**

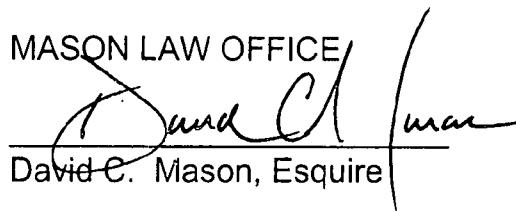
Defendants reserve the right to supplement this list upon reasonable notice to the Court and Plaintiff's counsel and to introduce any exhibits which are identified in the Pre-Trial Statement of any other party.

**IV. EXTRAORDINARY EVIDENTIARY ISSUES:** None anticipated.

**V. ESTIMATED TIME FOR TRIAL:** One (1) day.

Respectfully submitted,

MASON LAW OFFICE

  
David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

HOUTZDALE MUNICIPAL AUTHORITY

\*

\* No. 2003-1895-CD

Plaintiff/Petitioner

\*

\*

VS.

\*

\*

ERIC O. GILLILAND and BERNADETTE  
GILLILAND, his wife,

\*

\*

\*

Defendants/Respondents \*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served a true and correct copy of a **PRE-TRIAL STATEMENT** filed to the above captioned action, by hand delivering the same to the following:

John R. Carfley, Esquire  
222 Presqueisle Street  
P.O. Box 249  
Philipsburg, PA 16866

DATED: 5-27-04

MASON LAW OFFICE

BY: DC

David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY :  
Plaintiff

vs. : No. 2003-1895-CD

ERIC O. GILLILAND and BERNADETTE :  
GILLILAND, his wife,  
Defendants :

PRE-TRIAL STATEMENT

1. Factual Statement of the Claim:

The Houtzdale Municipal Authority, hereinafter HMA, filed a Petition for Injunctive Relief, a Complaint and Amended Complaint which alleged inter alia HMA's acquisition of a water line and vehicular right of way crossing Defendants' properties. The transmission pipeline right of way is recorded in both Clearfield and Centre Counties in those documents indexed in Miscellaneous Book 50, Page 113 (Clearfield County) and Miscellaneous Book 28, Page 320 (Centre County). HMA has maintained a water allocation permit for the Moshannon Creek since the early 1900's. This permit was originally granted by the Commonwealth of Pennsylvania, Department of Forests and Waters, Water and Power Resources Board, now the Department of Environmental Protection (hereinafter DEP) and was extended by the DEP when the Authority developed its original well field and surface source at Mountain Branch watershed and constructed its water treatment facility in Woodward Township, Clearfield County, Pennsylvania, in or about the year 1995. It is believed that the said roadway which provides access to the Moshannon Creek wellfield has been in existence and has been

utilized by HMA, the general public as well as by administrative agencies, private corporations, individuals, agents, employees, and other representatives, from as early as 1912 to the present date. This roadway is and has been depicted on aerial photography dating from the 1950's and is locatable on more modern photography flown in the mid to late 1990's. Subsequent to the acquisition of those properties now owned by the defendant, defendant without permission and consent from the plaintiff and/or any other administrative body which had in the past enjoyed free passage over the said roadway, constructed a gate on Tax Parcel L16-136 and secured said gate with a chain and lock to which they initially provided keys to the plaintiff in order to allow access to its properties by means of the existing roadway.

The plaintiff as part of its municipal mandate had constructed a water line over and across the property owned by the plaintiff and property owned by the defendants and/or their predecessors in title and in so doing to the best of Plaintiff's knowledge, information and belief secured easements for a roadway to access said water line and the water source on Moshannon Creek serviced by the pipeline. Plaintiff contends that it acquired title to this roadway either by unrecorded instruments of conveyance, by its right of condemnation and/or by past usage for a period in excess of 21 years. Plaintiff has filed this action to seek either ownership or the right of passage over the subject roadway without interference by the Defendants who have now illegally occupied and misappropriated the roadway which was previously utilized

concurrently by the plaintiff, the Defendant and the general public; its further purpose in this action is to insure Plaintiff's right to develop the property owned by the plaintiff to further the best interest and welfare of the general public since this land is now part of a comprehensive program to develop a well field to qualitatively and quantitatively enhance the water resources of the Authority.

In a corordinated effort to secure its right of access to its water resources for the health, welfare and safety of the citizenry, Plaintiff has also filed a Motion for Summary Judgment to be heard by the court on Thursday, May 27, 2004, and in default of a positive ruling thereon has secured a trial date for June, 2004.

Defendant has filed an answer to the pleadings and the Motion for Summary Judgment and this matter is now scheduled for Pre-trial conference on Thursday, May 27, 2004 and trial on June 9, 2004.

## 2. Exhibits:

1. Deed of defendants which properties are situate, lying and being in Gulich Township and Woodward Township, being more particularly identified in that document entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument Number 200105981, a true and correct copy of which is attached to Plaintiff's Amended Complaint as Exhibit A.

2. Tax Map Numbers 118-L16-000-00172 and Number 118-L16-000-00136 as more fully depicted on the retracement map prepared by

Unitec Consulting Engineers, Inc. and attached to Plaintiff's Amended Complaint as Exhibit B.

3. Plaintiff's deed entered for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Volume 485, Page 372; said property currently bears Clearfield County Assessment Number 118-L17-22. A true and correct copy of said deed is attached to Plaintiff's Amended Complaint as Exhibit C.

4. Abstract of title for Plaintiff's property which is referred to as the Robert Henderson tract, is more fully outlined in that deed hereinabove identified and attached to Plaintiff's Amended Complaint as Exhibit C.

5. Plaintiff's acquisition of a water line right of way crossing Defendants' properties which right of way is recorded in both Clearfield and Centre Counties in those documents indexed in Miscellaneous Book 50, Page 113 (Clearfield County) and Miscellaneous Book 28, Page 320 (Centre County) respectively, which documents are attached to Plaintiff's Amended Complaint as Exhibits D and E.

6. Feasibility study which was approved by the DEP to develop a well field and surface water source in the Moshannon Creek Watershed to supplement its water supply and to provide a quantitative and qualitative increase in the water available for transmission through its system. Said feasibility study was commenced by Unitec Engineering pursuant to a Consent Order and Decree entered into by DEP and HMA in August of 1999, a true and

correct copy of said Agreement and Consent Order being affixed to Plaintiff's Amended Complaint as Exhibit G.

7. Evidence of the appropriation, acquisition and taking of the Moshannon Creek water source as well as the necessary authority recited in the resolution to secure by "purchase and lease from the riparian owners the necessary lands, rights of way, release of damages, etc." as well as the proof of the actual appropriation and taking from the Moshannon Creek is contained in and confirmed by the statement of the Ramey Water Company of June 11, 1912, a true and correct copy of said statement being sworn to and affirmed by the corporate officers of the company on March 15, 1938. True and correct copies of these records are attached to Plaintiff's Amended Complaint as Exhibit F.

Plaintiff reserves the right to supplement its exhibit list if necessary and upon reasonable notice to Defendants.

3. Witnesses:

1. Patrick Ward, P.E. Consulting Engineers - HMA
2. Donald Ross, Current Chairman-HMA Board of Directors.
3. Dr. Richard Parizek, Hydrogeologist
4. John Fudrow, Manager - HMA.
5. Richard Provost, Realtor.
6. Sam Yost, Surveyor.
7. Commonwealth of Pa. Department of Environmental Protection Officials as yet unidentified.

Plaintiff reserves the right to call such additional witnesses as may become necessary and with reasonable notice to the defendant

of HMA's intent to do so.

4. Statement of Legal Theory:

After argument on Plaintiff's Motion for Summary Judgment and formalization of Defendant's position with respect to Plaintiff's claim of acquisition of title to the roadway by right of eminent domain, Plaintiff will file its Brief filed in support of its Motion for Summary Judgment as it pertains to Plaintiff's statutory rights under the Eminent Domain Code and its right to acquire real estate and easements as necessary to expand upon its water resource capabilities.

5. Extraordinary Evidentiary Problems:

None.

6. Stipulations:

Plaintiff anticipates that Defendant should be prepared to stipulate as follows:

a. The qualifications of the expert witnesses identified herein in their respective fields.

b. The legality of the proceedings filed by the Plaintiff and the legal authority of the Plaintiff to appropriate property under the Eminent Domain Code for the use designated in the filing or as designated by usage.

c. The location of the subject property and the adjoinders to the property.

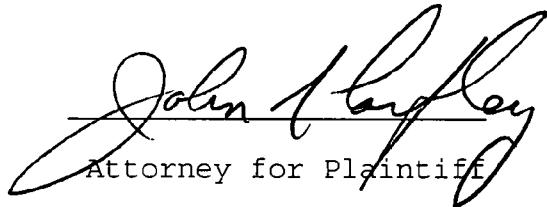
d. Plaintiff's chain of title.

e. The area condemned lies within a watershed and as such is protected from mining and other usage by regulations, statutes and other restrictive conditions established by the Commonwealth of Pennsylvania, Department of Environmental Protection and other State and Federal agencies.

7. Estimated Time for Trial:

Plaintiff estimates that trial of this matter could be completed in 1 day.

RESPECTFULLY SUBMITTED,



John H. Flory  
Attorney for Plaintiff

Dated: May 25, 2004