

Houtzdale Mun. Auth v. Machipongo Lan
2005-860-CD

05-860-CD
Houtzdale Mun. vs. Machipongo

Date: 10/07/2005

Time: 11:22 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: LBENDER

ROA Report

Case: 2005-00860-CD

Current Judge: No Judge

Houtzdale Municipal Authority vs. Machipongo Land & Coal Company

Civil Other

Date		Judge
06/17/2005	New Case Filed.	No Judge
	✓ Filing: Declaration of Taking .32 Acres Paid by: Carfley, John R. (attorney for Houtzdale Municipal Authority) Receipt number: 1903102 Dated: 06/17/2005 Amount: \$85.00 (Check) 3 Cert. to Atty. Carfley	No Judge
	✓ Notice of Condemnation, filed by Atty. Carfley 3 Cert. to Atty.	No Judge
	✓ Memorandum, filed by Atty. Carfley 3 Cert. to Atty.	No Judge
	✓ Bond, filed by Atty. Carfley 3 cert. to Atty.	No Judge
06/23/2005	✓ Memorandum with Recorder of Deed Number, filed by Atty. Carfley no cert. copies.	No Judge
07/07/2005	✓ Certificate of Service, Affidavit of Process Server in the above captioned matter, served Machipongo Land & Coal Co., on June 23, 2005, filed by s/ John R. Carfley Esquire. No CC.	No Judge
09/07/2005	✓ Petition to Compel, filed by s/ John R. Carfley, Esquire. 2CC Atty. Carfley	Fredric Joseph Ammerman
09/08/2005	✓ Rule Returnable, NOW, this 8th day of September, 2005, upon consideration of the Petition to Compel of Houtzdale Municipal Authority, Condemnor, a rule is granted upon Machipongo Land & Coal Company, Condemnee, to show cause why the prayer of said Petition should not be granted. Rule returnable the 13th day of October, 2005 at 9:30 a.m. in Courtroom Number 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge.	Fredric Joseph Ammerman
09/21/2005	✓ Petition Of Condemnor for Writ of Possession, no cc	No Judge
09/26/2005	✓ Rule AND NOW, this 23rd day of September 2005, upon consideration of the Petition of Houtzdale Municipal Authority, a rule is granted upon Machipongo Land & Coal Company to show cause why a writ of possession shall not issue conditioned upon payment to the Prothonotary of \$209.00 for the use of Machipongo Land & Coal Company without any commissions or fees deductible therefrom, as it interest may appear. Rule returnable the 27th day of September 2005, at 10:30 a.m. room No. 1. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC atty Carfley.	No Judge
09/29/2005	✓ Rule, NOW, this 29th day of Sept., 2005, a rule is granted upon Machipongo Land & Coal. Company. Rule returnable the 13th day of October, 2005 at 9:30 a.m. Room No. 1, Clfd. Co. Courthouse. /s/ Fredric J. Ammerman, Judge. 2CC Atty. Carfley	No Judge

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY CIVIL ACTION
(Plaintiff)

561 Kirk Street
(Street Address)
Houtzdale, PA 16651
(City, State ZIP)

No. 2005-860-CD

Type of Case: Eminent Domain

Type of Pleading: Declaration of Taking

VS.

MACHIPONGO LAND & COAL CO.
(Defendant)
c/o Charles B. Jones
P. O. Box 195
(Street Address)

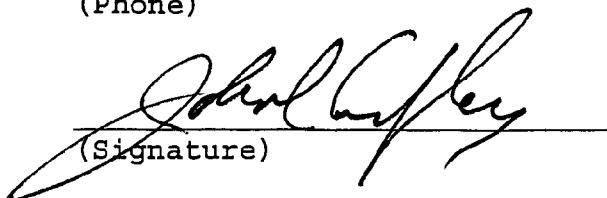
Ramey, PA 16671
(City, State ZIP)

Filed on Behalf of:

Plaintiff
(Plaintiff/Defendant)

John R. Carfley, Esq.
(Filed by)
P. O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866
(Address)

814-342-5581
(Phone)


(Signature)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO. PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-860-C0

Type of Case:
Eminent Domain

Type of Pleading:
Declaration of Taking

Filed on behalf of:
Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581
PA I.D. #: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

FILED

JUN 17 2005
011-30168
William A. Shaw

Prothonotary/Clerk of Courts

3 CENTS TO ATT

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HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

EMINENT DOMAIN

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and the Municipal Authorities Act of June 19, 2001, P.L. 287 No. 22, 53 Pa. C.S.A. §5601 et. seq. (the "Act") and respectfully declares that:

1. The Condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the provisions of the Act as hereinabove specified with its

principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651, (the "Condemnor").

2. The interest in the property hereinafter described is hereby condemned in fee simple or absolute title by the Condemnor, in general, for purposes of expanding and enhancing the water supply, water storage and water distribution system pursuant to specific Sections 5607(d)(15) and 5615(a) of the Act and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402, (26 P.S. 1-402 et. seq). The within condemnation has been authorized by a final Resolution of the Condemnor which was enacted the 15th day of June, 2005. A copy of said resolution is attached hereto and made a part hereof as Exhibit "A." The original may be examined at the address of the Condemnor.

3. The purpose of the condemnation is to provide for the general purposes hereinabove stated and for the specific purposes set forth below:

(a) To provide a site upon which to place a pump for purposes of pumping and distribution of the ground water and surface water sources of the Condemnor and to specifically enlarge, upgrade and renovate the water supply system, the water storage system, the water treatment system and the water distribution system of water capability, throughout the facilities operated by the Condemnor throughout the Moshannon Valley.

(b). To provide a pump site in order to distribute the water resource and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the Condemnor throughout the Moshannon Valley.

(c). To provide a primary booster pump site to transmit water through the station to the proposed Henderson finished water storage tank while fulfilling the secondary task of replacing the function of the existing Ocean booster pump station by locating the station near the site of the present Ocean pump station and connecting the same to the existing piping along State Route 153. This pump station will lift finished water from the Houtzdale pressure zone to the Henderson

pressure zone via the proposed Henderson finished water storage tank, establishing a designed pumping rate of 210 gallons per minute (g.p.m.) representing the maximum daily demand flow rate of the Henderson pressure zone.

4. A description of the subject property being condemned, sufficient for its identification is set forth in the attached Exhibit "B" and map attached as Exhibit "C" and is more specifically described as that certain piece or parcel of real estate located in Brisbin Borough, Clearfield County, Pennsylvania, consisting of approximately .32 acres currently owned by the Condemnee and more particularly described in that certain Deed dated December 31, 1952, recorded in the office of the Recorder of Deeds in and for Clearfield County in Deed Book 426, Page 481, being Clearfield County Assessment Number 1-M14-10.

On the same day as this Declaration of Taking is being filed with the Prothonotary, plans showing the property condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404.

5. The nature of the title acquired in and to the property is a fee simple or absolute title of the subject property described in the exhibits attached hereto.

6. A plan showing the condemned property may be inspected at the office of the Condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

7. The Condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond and pursuant to the pledge of Authority assets and collateral as set forth in the Resolution, Bond and this Declaration of Taking. A copy of the bond is attached hereto as Exhibit "D" and has or is to be filed in the Court of Common Pleas of Clearfield County and stands as collateral for the reasonable value of the property estimated to be in an

amount not to exceed \$1,500.00 as established by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

BY

James H. McQuown

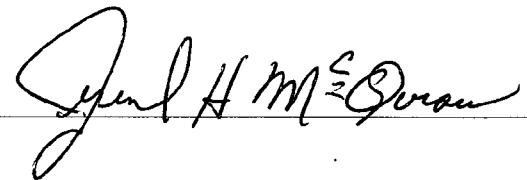
Chairman

ATTEST:

Robert P. Jones
Secretary

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.

A handwritten signature in black ink, appearing to read "Gerald H. McQuarrie". The signature is fluid and cursive, with "Gerald" and "H." being more stylized, and "McQuarrie" being more legible.

Dated: June 15, 2005

EXHIBIT "A"

Resolution

RESOLUTION

THE CONDEMNATION IN FEE SIMPLE, OF A TRACT OF LAND CONSISTING OF .32 ACRES, (14,118 SQ. FEET), MORE OR LESS, SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO. PENNSYLVANIA, BY THE HOUTZDALE MUNICIPAL AUTHORITY FOR PURPOSE OF CONSTRUCTING A BOOSTER PUMP STATION FOR THE EXPLICIT PURPOSE OF ENHANCING THE EXISTING WATER RESOURCES OF THE HOUTZDALE MUNICIPAL AUTHORITY THROUGH THE EXPANSION OF THE WATER DISTRIBUTION SYSTEM OF GROUND WATER AND SURFACE WATER AND FOR OTHER PURPOSES INVOLVED IN THE UPGRADING AND RENOVATION OF ITS WATER TREATMENT, WATER STORAGE AND WATER DISTRIBUTION SYSTEMS, INCLUDING, BUT NOT LIMITED TO, THE SPECIFIC GOAL OF LIFTING FINISHED WATER FROM THE HOUTZDALE PRESSURE ZONE TO THE HENDERSON PRESSURE ZONE VIA THE PROPOSED HENDERSON FINISHED WATER STORAGE TANK.

WHEREAS, the Houtzdale Municipal Authority has embarked upon the planning, approval, and financing to complete the construction of a pump station site located upon property owned by Machipongo Land and Coal Company in Brisbin Borough, Clearfield County, PA; and

WHEREAS, in order to carry out its proposed purposes, it is necessary for the Houtzdale Municipal Authority to acquire property owned by Machipongo Land and Coal Company (the "Condemnee"), such lands being located in Brisbin Borough, Clearfield County, Pennsylvania, and being more particularly described in that certain Deed dated December 31, 1952 and recorded in the Office of the Recorder of Deeds in and for Clearfield County, Pennsylvania, in Deed Book 426, page 481, and consisting of that property identified as bearing Clearfield County Tax Parcel Number 1-M14-10, specified for the purpose of constructing a pump station site with the explicit purpose of expanding the existing water resources of Houtzdale Municipal Authority through the enhancement of the water distribution system of ground water and surface water and for other purposes involved in the upgrading and renovation of its water treatment and water distribution systems; and

WHEREAS, the Houtzdale Municipal Authority has been unable to agree with the Condemnees on the price or damages to be paid; and

WHEREAS, in accordance with Sections 5607(d)(15) and 5615(a) of the Municipal Authorities Act (55 Pa. C.S.A. §5601 et. seq.) as amended, the Authority is authorized to acquire an interest in property through Eminent Domain proceedings;

NOW THEREFORE BE IT RESOLVED, That the Houtzdale Municipal Authority, in accordance with the authority conferred by law, selects and appropriates the following property rights consisting of .32 acres, (14,118 square feet, more or less) in fee simple, more particularly bounded and described on the attached Exhibit "A", and as depicted on the survey map attached hereto as Exhibit "B."

RESOLVED, That all title and private rights or easements of whatever nature of property owners in the hereinabove described property are hereby selected and appropriated for the purposes set forth herein in accordance with law.

RESOLVED, That the title to be acquired shall be a conveyance, in fee simple, of the acres of land.

RESOLVED, That counsel for the Houtzdale Municipal Authority and its proper officers are hereby authorized to file a declaration of taking and such other proceedings, including the entry of such bond as may be necessary or desirable to carry out the purpose of this resolution.

RESOLVED, That the institution of such proceedings, and any damages which may be agreed upon or awarded to any party in interest, including the owner or owners of said properties located within the area, shall be paid out of the funds of the Houtzdale Municipal Authority based upon an estimate of just compensation as determined by the Condemnor or by a real estate agent qualified to perform appraisals in matters involving the condemnation of real property.

HOUTZDALE MUNICIPAL AUTHORITY

By Edmund H. M. S.

ATTEST:

Robert M. Jones

Secretary

Dated: June 15, 2005

EXHIBIT "A"

BEGINNING on the western edge of Irvin Street, a forty foot right of way, situate in Brisbin Borough, Clearfield County, Pennsylvania; thence South $39^{\circ} 25' 25''$ West a distance of 153.99 feet to a wooden stake on the eastern edge of S. R. 0153, Henderson Street, a sixty foot right of way; thence proceeding along said right of way on a curve with the following descriptive designations: a delta of $11^{\circ} 16' 56''$, a radius of 1141.38'; a tangent distance of 112.74', a length of curve of 224.75' a length of chord of 224.39', the long chord bearing of N $09^{\circ} 34' 12''$ W, and a degree of curve of $05^{\circ} 01' 12''$ to a point; thence South $72^{\circ} 00' 02''$ East a distance of 9.11 feet to a point; thence South $51^{\circ} 48' 01''$ East a distance of 160.89 feet to a wooden stake and place of beginning. Representing a land site to be used for the construction of a pump station as more accurately depicted on the survey map completed by Yost Surveying on August 5, 2004, a copy of which is attached hereto.

EXHIBIT "B"

See map attached to Declaration of Taking as Exhibit "C"

EXHIBIT "B"

Description

BEGINNING on the western edge of Irvin Street, a forty foot right of way, situate in Brisbin Borough, Clearfield County, Pennsylvania; thence South $39^{\circ} 25' 25''$ West a distance of 153.99 feet to a wooden stake on the eastern edge of S. R. 0153, Henderson Street, a sixty foot right of way; thence proceeding along said right of way on a curve with the following descriptive designations: a delta of $11^{\circ} 16' 56''$, a radius of 1141.38'; a tangent distance of 112.74', a length of curve of 224.75' a length of chord of 224.39', the long chord bearing of N $09^{\circ} 34' 12''$ W, and a degree of curve of $05^{\circ} 01' 12''$ to a point; thence South $72^{\circ} 00' 02''$ East a distance of 9.11 feet to a point; thence South $51^{\circ} 48' 01''$ East a distance of 160.89 feet to a wooden stake and place of beginning. Representing a land site to be used for the construction of a pump station as more accurately depicted on the survey map completed by Yost Surveying on August 5, 2004, a copy of which is attached hereto.

EXHIBIT "C"

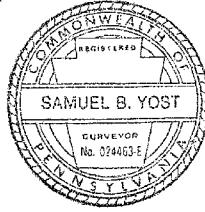
Map

REGISTERED SURVEYOR'S CERTIFICATION:

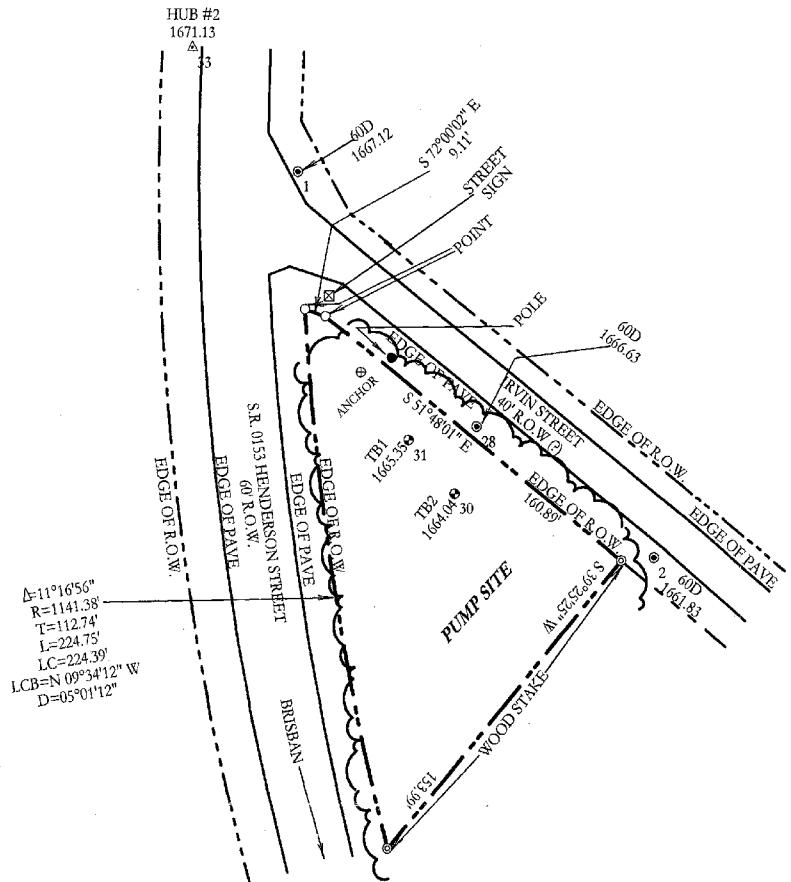
I, SAMUEL B. YOST, A REGISTERED PROFESSIONAL SURVEYOR
OF THE STATE OF PENNSYLVANIA, DO HEREBY CERTIFY THAT
THIS PLAN CORRECTLY REPRESENTS THE LOTS, LANDS,
STREET, ALLEYS, AND HIGHWAYS SURVEYED AND
MAPPED BY ME FOR THE DEVELOPER.

James C. West
SU-024463-E

#SU-024463-F



NORTH



STATION	DESCRIPTION	N	E	ELEVATION
1	60D	246832.729	1799372.028	1667.12
33	HUB #2	246882.762	1799326.957	1671.13
2	60D	246674.999	1799524.347	1661.83
31	TB1	246722.190	1799419.875	1665.35
30	TB2	246700.395	1799439.650	1664.04

CD #3

DRAWN BY: WRY

**HMA
PUMP SITE**

*YOST SURVEYING
CLEARFIELD, PA.*

EXHIBIT 'D'

Bond

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

Type of Case:
Eminent Domain

Type of Pleading:
Bond

Filed on behalf of:
Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581
PA I.D.#: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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CONDEMNOR

No.:

Eminent Domain

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

B O N D

KNOW ALL MEN BY THESE PRESENTS, that a Declaration of Taking having been
filed the 17th day of June, 2005, by the Houtzdale Municipal Authority, (Obligor), a municipal
authority organized and existing under the laws of the Commonwealth of Pennsylvania, being
held and firmly bound unto the Commonwealth of Pennsylvania ("obligee") for the use and
benefit of Machipongo Land and Coal Company, the owner or owners of the Property being
condemned is located, and other proper parties in interest, (the "Condemnee") for such amount of
damages as the Condemnee shall be entitled to receive after the same shall have been agreed
upon or assessed in the manner prescribed by law, by reason of the condemnation of such
property by obligor of those certain lands and/or improvements owned by the Condemnee, being

being more particularly described in that certain deed dated December 31, 1952, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book No. 426, page 481, such right of way and/or easement being specifically described in the Declaration of Taking as follows:

BEGINNING on the western edge of Irvin Street, a forty foot right of way, situate in Brisbin Borough, Clearfield County, Pennsylvania; thence South $39^{\circ} 25' 25''$ West a distance of 153.99 feet to a wooden stake on the eastern edge of S. R. 0153, Henderson Street, a sixty foot right of way; thence proceeding along said right of way on a curve with the following descriptive designations: a delta of $11^{\circ} 16' 56''$, a radius of 1141.38'; a tangent distance of 112.74', a length of curve of 224.75' a length of chord of 224.39', the long chord bearing of N $09^{\circ} 34' 12''$ W, and a degree of curve of $05^{\circ} 01' 12''$ to a point; thence South $72^{\circ} 00' 02''$ East a distance of 9.11 feet to a point; thence South $51^{\circ} 48' 01''$ East a distance of 160.89 feet to a wooden stake and place of beginning. Representing a land site to be used for the construction of a pump station as more accurately depicted on the survey map completed by Yost Surveying on August 5, 2004, a copy of which is attached hereto.

the legal description by metes and bounds being filed with this bond and in conjunction with the Declaration of Taking, Resolution and all other documents supporting this condemnation action; to which payment well and truly to be made, the obligor does bind itself and its successors, and assigns, firmly by these presents.

WHEREAS, the obligor has condemned the said property and cannot agree with the Condemnee upon the just compensation to be paid for the damages sustained by the Condemnee as a result of the condemnation:

NOW THE CONDITION of this bond is such that if the obligor shall pay or cause to be paid such amount of damages as the Condemnee shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

SEALED with the corporate seal and duly executed this 15th day of June,
2005.

HOUTZDALE MUNICIPAL AUTHORITY

By Jennifer H. M. S. O'Donnell

ATTEST:

Robert W. Jones

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY CIVIL ACTION
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No. 2005-860-CD

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Type of Pleading: Notice of Condemnation

VS.

MACHIPONGO LAND & COAL CO.
(Defendant)
c/o Charles B. Jones
P. O. Box 195
(Street Address)

Ramey, PA 16671
(City, State ZIP)

Filed on Behalf of:

Plaintiff
(Plaintiff/Defendant)

John R. Carfley, Esq.

(Filed by)

P. O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866

(Address)

814-342-5581

(Phone)

(Signature)

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No.: 2005 - 860 - C0

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Filed on behalf of:
Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581
PA I.D.#: 17621

VS.

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CONDEMNEE

FILED

JUN 17 2005

6/1: 30 PM

William A. Shaw

Prothonotary/Clerk of Courts

3 cent to A

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HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

EMINENT DOMAIN

VS.

THE ERICKSON FAMILY TRUST
CONDEMNEE

NOTICE OF CONDEMNATION

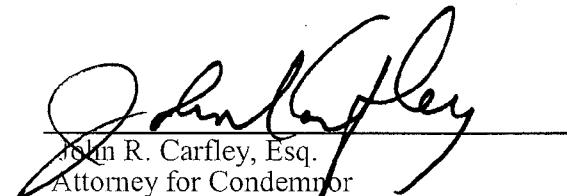
TO: Machipongo Land & Coal Co.
C/o Charles B Jones
P. O. Box 195
Ramey, PA 16671

In accordance with Sections 5607(d)(15) and 5615(a) of the Municipal Authorities Act,
Act of June 19, 2001, P.L. 287, No. 22, 55 Pa. C.S.A. §5601 et. seq. and Section 1-405 of the
Eminent Domain Code of 1964, 26 P.S. §1-405, Notice is hereby given by Houtzdale Municipal
Authority, (the "Authority") having an address of 561 Kirk Street, P. O. Box 97, Houtzdale,
Pennsylvania, that:

1. A Declaration of Taking, a copy of which is attached as Exhibit "A" and incorporated herein, was filed on the _____ day of _____, 2005, in the Court of Common Pleas of Clearfield County, Pennsylvania to the above term and number.

2. The Declaration of Taking was filed by the Authority to condemn the property more particularly described in the Declaration of Taking. The purpose of this condemnation is for the construction of a pump station site with the explicit purpose of expanding the existing water resources of Houtzdale Municipal Authority through the enhancement of the water distribution system of ground water and surface water and for other purposes involved in the upgrading and renovation of its water treatment and water distribution systems, all as more particularly described in the Declaration of Taking. Identification of the property being condemned appears on Exhibits "A" and "B" of the Declaration of Taking.

3. If you wish to challenge the power or right of Houtzdale Municipal Authority to appropriate the condemned property, the sufficiency of the security, the procedure followed by the Authority, or the declaration of taking, you are required to file preliminary objections within 30 days after being served with this notice.



John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581
ID# 17621

Dated:

EXHIBIT “A”

Filed without Exhibits “A” through “D” attached to
copy of Declaration of Taking

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

Type of Case:

Eminent Domain

Type of Pleading:

Declaration of Taking

Filed on behalf of:

Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.

P. O. Box 249

Philipsburg, PA 16866

814-342-5581

PA I.D. #: 17621

VS.

MACHIPONGO LAND & COAL COMPANY.
CONDEMNEE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A No.:
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION EMINENT DOMAIN
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
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HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and the Municipal Authorities Act of June 19, 2001, P.L. 287 No. 22, 53 Pa. C.S.A. §5601 et. seq. (the "Act") and respectfully declares that:

I. The Condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the provisions of the Act as hereinabove specified with its

principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651, (the "Condemnor").

2. The interest in the property hereinafter described is hereby condemned in fee simple or absolute title by the Condemnor, in general, for purposes of expanding and enhancing the water supply, water storage and water distribution system pursuant to specific Sections 5607(d)(15) and 5615(a) of the Act and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402, (26 P.S. 1-402 et. seq). The within condemnation has been authorized by a final Resolution of the Condemnor which was enacted the 15th day of June, 2005. A copy of said resolution is attached hereto and made a part hereof as Exhibit "A." The original may be examined at the address of the Condemnor.

3. The purpose of the condemnation is to provide for the general purposes hereinabove stated and for the specific purposes set forth below:

(a) To provide a site upon which to place a pump for purposes of pumping and distribution of the ground water and surface water sources of the Condemnor and to specifically enlarge, upgrade and renovate the water supply system, the water storage system, the water treatment system and the water distribution system of water capability, throughout the facilities operated by the Condemnor throughout the Moshannon Valley.

(b). To provide a pump site in order to distribute the water resource and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the Condemnor throughout the Moshannon Valley.

(c). To provide a primary booster pump site to transmit water through the station to the proposed Henderson finished water storage tank while fulfilling the secondary task of replacing the function of the existing Ocean booster pump station by locating the station near the site of the present Ocean pump station and connecting the same to the existing piping along State Route 153. This pump station will lift finished water from the Houtzdale pressure zone to the Henderson

pressure zone via the proposed Henderson finished water storage tank, establishing a designed pumping rate of 210 gallons per minute (g.p.m.) representing the maximum daily demand flow rate of the Henderson pressure zone.

4. A description of the subject property being condemned, sufficient for its identification is set forth in the attached Exhibit "B" and map attached as Exhibit "C" and is more specifically described as that certain piece or parcel of real estate located in Brisbin Borough, Clearfield County, Pennsylvania, consisting of approximately .32 acres currently owned by the Condemnee and more particularly described in that certain Deed dated December 31, 1952, recorded in the office of the Recorder of Deeds in and for Clearfield County in Deed Book 426, Page 481, being Clearfield County Assessment Number 1-M14-10.

On the same day as this Declaration of Taking is being filed with the Prothonotary, plans showing the property condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404.

5. The nature of the title acquired in and to the property is a fee simple or absolute title of the subject property described in the exhibits attached hereto.

6. A plan showing the condemned property may be inspected at the office of the Condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

7. The Condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond and pursuant to the pledge of Authority assets and collateral as set forth in the Resolution, Bond and this Declaration of Taking. A copy of the bond is attached hereto as Exhibit "D" and has or is to be filed in the Court of Common Pleas of Clearfield County and stands as collateral for the reasonable value of the property estimated to be in an

amount not to exceed \$1,500.00 as established by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

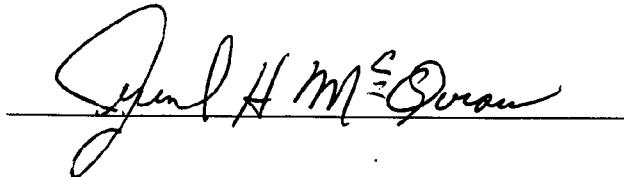
BY Emilia H. M. Givens
Chairman

ATTEST:

Robert M. Jones
Secretary

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.



Dated: June 15, 2005

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY CIVIL ACTION
(Plaintiff)

841 Kirk Street
(Street Address)
Houtzdale, PA 16651
(City, State ZIP)

No. 2005-860-CD

Type of Case: Eminent Domain

Type of Pleading: Memorandum

VS.

MACHIPONGO LAND & COAL CO.
(Defendant)
c/o Charles B. Jones
P. O. Box 195
(Street Address)
Ramey, PA 16671
(City, State ZIP)

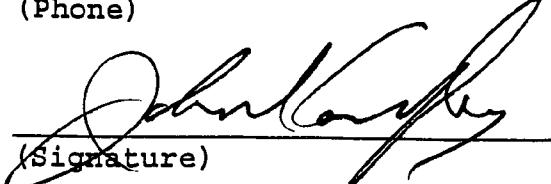
Filed on Behalf of:

Plaintiff
(Plaintiff/Defendant)

John R. Carfley, Esq.
(Filed by)

P. O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866
(Address)

814-342-5581
(Phone)


(Signature)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-860-10

Type of Case:
Eminent Domain

Type of Pleading:
Memorandum

Filed on behalf of:
Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581
PA I.D.#: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

FILED

JUN 17 2005

011730

William A. Shaw

Prothonotary/Clerk of Courts

3 come to Attn

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
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HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

EMINENT DOMAIN

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

MEMORANDUM TO PROTHONOTARY OF FILING OF NOTICE WITH
RECORDER OF DEED

TO THE PROTHONOTARY:

Notice is hereby given that the Houtzdale Municipal Authority, as "Condemnor", on
2005, filed a Declaration of Taking in the above-named Court to the
above term and number in an action to condemn _____ acres in fee simple owned by Machipongo
Land & Coal Co., being more particularly described in that Declaration of Taking, a copy of
which is attached hereto as Exhibit "A" and made a part hereof. The name of the owner of the
property is Machipongo Land & Coal Company, the "Condemnee". A Notice of Condemnation
for the property being condemned has been filed in the Office of the Recorder of Deeds in and
for Clearfield County, Pennsylvania as Instrument Number _____

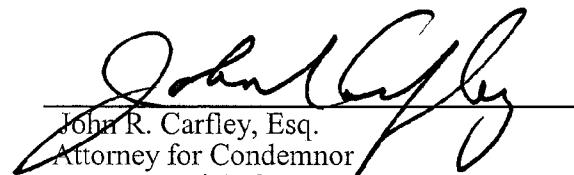

John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581

EXHIBIT “A”

Filed without Exhibits “A” through “D” attached to
copy of Declaration of Taking

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
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LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

Type of Case:

Eminent Domain

Type of Pleading:

Declaration of Taking

Filed on behalf of:

Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.

P. O. Box 249

Philipsburg, PA 16866

814-342-5581

PA I.D. #: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
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HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No. 2

EMINENT DOMAIN

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and the Municipal Authorities Act of June 19, 2001, P.L. 287 No. 22, 53 Pa. C.S.A. §5601 et. seq. (the "Act") and respectfully declares that:

1. The Condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the provisions of the Act as hereinabove specified with its

principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651, (the "Condemnor").

2. The interest in the property hereinafter described is hereby condemned in fee simple or absolute title by the Condemnor, in general, for purposes of expanding and enhancing the water supply, water storage and water distribution system pursuant to specific Sections 5607(d)(15) and 5615(a) of the Act and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402, (26 P.S. 1-402 et. seq). The within condemnation has been authorized by a final Resolution of the Condemnor which was enacted the 15th day of June, 2005. A copy of said resolution is attached hereto and made a part hereof as Exhibit "A." The original may be examined at the address of the Condemnor.

3. The purpose of the condemnation is to provide for the general purposes hereinabove stated and for the specific purposes set forth below:

(a) To provide a site upon which to place a pump for purposes of pumping and distribution of the ground water and surface water sources of the Condemnor and to specifically enlarge, upgrade and renovate the water supply system, the water storage system, the water treatment system and the water distribution system of water capability, throughout the facilities operated by the Condemnor throughout the Moshannon Valley.

(b). To provide a pump site in order to distribute the water resource and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the Condemnor throughout the Moshannon Valley.

(c). To provide a primary booster pump site to transmit water through the station to the proposed Henderson finished water storage tank while fulfilling the secondary task of replacing the function of the existing Ocean booster pump station by locating the station near the site of the present Ocean pump station and connecting the same to the existing piping along State Route 153. This pump station will lift finished water from the Houtzdale pressure zone to the Henderson

pressure zone via the proposed Henderson finished water storage tank, establishing a designed pumping rate of 210 gallons per minute (g.p.m.) representing the maximum daily demand flow rate of the Henderson pressure zone.

4. A description of the subject property being condemned, sufficient for its identification is set forth in the attached Exhibit "B" and map attached as Exhibit "C" and is more specifically described as that certain piece or parcel of real estate located in Brisbin Borough, Clearfield County, Pennsylvania, consisting of approximately .32 acres currently owned by the Condemnee and more particularly described in that certain Deed dated December 31, 1952, recorded in the office of the Recorder of Deeds in and for Clearfield County in Deed Book 426, Page 481, being Clearfield County Assessment Number 1-M14-10.

On the same day as this Declaration of Taking is being filed with the Prothonotary, plans showing the property condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404.

5. The nature of the title acquired in and to the property is a fee simple or absolute title of the subject property described in the exhibits attached hereto.

6. A plan showing the condemned property may be inspected at the office of the Condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

7. The Condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond and pursuant to the pledge of Authority assets and collateral as set forth in the Resolution, Bond and this Declaration of Taking. A copy of the bond is attached hereto as Exhibit "D" and has or is to be filed in the Court of Common Pleas of Clearfield County and stands as collateral for the reasonable value of the property estimated to be in an

amount not to exceed \$1,500.00 as established by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

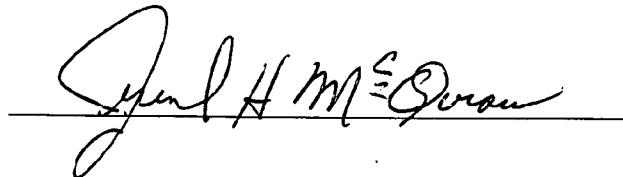
BY Jeremiah H. M. Quisen
Chairman

ATTEST:

Robert W. Jones
Secretary

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.



Dated: June 15, 2005

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY CIVIL ACTION
(Plaintiff)

561 Kirk Street
(Street Address)

Houtzdale, PA 16651
(City, State ZIP)

No. 2005-860-CD

Type of Case: Eminent Domain

Type of Pleading: Bond

VS.

MACHIPONGO LAND & COAL CO.
(Defendant)
c/o Charles B. Jones
P. O. Box 195
(Street Address)

Ramey, PA 16671
(City, State ZIP)

Filed on Behalf of:

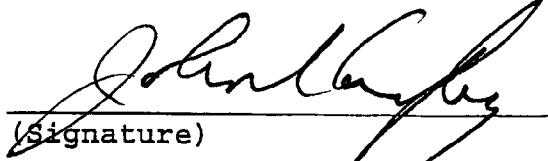
Plaintiff
(Plaintiff/Defendant)

John R. Carfley, Esq.
(Filed by)

P. O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866

(Address)

814-342-5581
(Phone)


John R. Carfley
(Signature)

5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-860-C

Type of Case:
Eminent Domain

Type of Pleading:
Bond

Filed on behalf of:
Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581
PA I.D.#: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

FILED

JUN 17 2005
011306
William A. Shaw
Prothonotary/Clerk of Courts

3 cent. to A/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

Eminent Domain

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

B O N D

KNOW ALL MEN BY THESE PRESENTS, that a Declaration of Taking having been
filed the 17th day of June, 2005, by the Houtzdale Municipal Authority, (Obligor), a municipal
authority organized and existing under the laws of the Commonwealth of Pennsylvania, being
held and firmly bound unto the Commonwealth of Pennsylvania ("obligee") for the use and
benefit of Machipongo Land and Coal Company, the owner or owners of the Property being
condemned is located, and other proper parties in interest, (the "Condemnee") for such amount of
damages as the Condemnee shall be entitled to receive after the same shall have been agreed
upon or assessed in the manner prescribed by law, by reason of the condemnation of such
property by obligor of those certain lands and/or improvements owned by the Condemnee, being

being more particularly described in that certain deed dated December 31, 1952, and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book No. 426, page 481, such right of way and/or easement being specifically described in the Declaration of Taking as follows:

BEGINNING on the western edge of Irvin Street, a forty foot right of way, situate in Brisbin Borough, Clearfield County, Pennsylvania; thence South $39^{\circ} 25' 25''$ West a distance of 153.99 feet to a wooden stake on the eastern edge of S. R. 0153, Henderson Street, a sixty foot right of way; thence proceeding along said right of way on a curve with the following descriptive designations: a delta of $11^{\circ} 16' 56''$, a radius of 1141.38'; a tangent distance of 112.74', a length of curve of 224.75' a length of chord of 224.39', the long chord bearing of N $09^{\circ} 34' 12''$ W, and a degree of curve of $05^{\circ} 01' 12''$ to a point; thence South $72^{\circ} 00' 02''$ East a distance of 9.11 feet to a point; thence South $51^{\circ} 48' 01''$ East a distance of 160.89 feet to a wooden stake and place of beginning. Representing a land site to be used for the construction of a pump station as more accurately depicted on the survey map completed by Yost Surveying on August 5, 2004, a copy of which is attached hereto.

the legal description by metes and bounds being filed with this bond and in conjunction with the Declaration of Taking, Resolution and all other documents supporting this condemnation action; to which payment well and truly to be made, the obligor does bind itself and its successors, and assigns, firmly by these presents.

WHEREAS, the obligor has condemned the said property and cannot agree with the Condemnee upon the just compensation to be paid for the damages sustained by the Condemnee as a result of the condemnation:

NOW THE CONDITION of this bond is such that if the obligor shall pay or cause to be paid such amount of damages as the Condemnee shall be entitled to receive by reason of such condemnation, after the same shall have been agreed upon or assessed in the manner provided by law, then this obligation shall be void; otherwise, to be and remain in full force and effect.

SEALED with the corporate seal and duly executed this 15th day of June,
2005.

HOUTZDALE MUNICIPAL AUTHORITY

By Spencer H. McQuaun

ATTEST:

Robert J. Jones

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

HOUTZDALE MUNICIPAL AUTHORITY CIVIL ACTION
(Plaintiff)

841 Kirk Street
(Street Address)
Houtzdale, PA 16651
(City, State ZIP)

No. 2005-860-CD

Type of Case: Eminent Domain

Type of Pleading: Memorandum

VS.

MACHIPONGO LAND & COAL CO.
(Defendant)
c/o Charles B. Jones
P. O. Box 195
(Street Address)
Ramey, PA 16671
(City, State ZIP)

Filed on Behalf of:

Plaintiff
(Plaintiff/Defendant)

FILED

JUN 23 2005
6/12:45pm
William A. Shaw
Prothonotary/Clerk of Courts
ACG CENP

John R. Carfley, Esq.
(Filed by)

P. O. Box 249
222 Presqueisle Street
Philipsburg, PA 16866
(Address)

814-342-5581
(Phone)

(Signature)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-866 - C

Type of Case:
Eminent Domain

Type of Pleading:
Memorandum

Filed on behalf of:
Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581

PA I.D.#: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

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

JUN 17 2005

Attest.

William L. Davis
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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CONDEMNOR

No.:

EMINENT DOMAIN

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

MEMORANDUM TO PROTHONOTARY OF FILING OF NOTICE WITH
RECORDER OF DEED

TO THE PROTHONOTARY:

Notice is hereby given that the Houtzdale Municipal Authority, as "Condemnor", on June 17, 2005, filed a Declaration of Taking in the above-named Court to the above term and number in an action to condemn acres in fee simple owned by Machipongo Land & Coal Co., being more particularly described in that Declaration of Taking, a copy of which is attached hereto as Exhibit "A" and made a part hereof. The name of the owner of the property is Machipongo Land & Coal Company, the "Condemnee". A Notice of Condemnation for the property being condemned has been filed in the Office of the Recorder of Deeds in and for Clearfield County, Pennsylvania as Instrument Number 200509107.

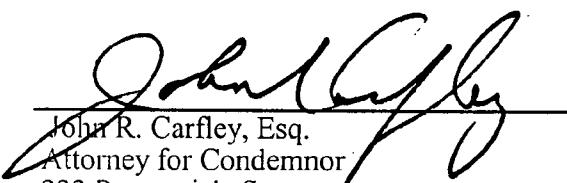

John R. Carfley, Esq.
Attorney for Condemnor
222 Presqueisle Street
Philipsburg, Pa., 16866
(814) 342-5581

EXHIBIT “A”

Filed without Exhibits “A” through “D” attached to
copy of Declaration of Taking

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.:

Type of Case:

Eminent Domain

Type of Pleading:

Declaration of Taking

Filed on behalf of:

Condemnor

Counsel of Record for this party:

John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16866
814-342-5581
PA I.D. #: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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CONDEMNOR

No.:

EMINENT DOMAIN

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

DECLARATION OF TAKING

The Houtzdale Municipal Authority does hereby file this Declaration of Taking, based on the provisions of Article IV, Section 402, of the Eminent Domain Code, Act of June 22, 1964, P.L. 84, 26 P.S. 1-402, as amended, and the Municipal Authorities Act of June 19, 2001, P.L. 287 No. 22, 53 Pa. C.S.A. §5601 et. seq. (the "Act") and respectfully declares that:

I. The Condemnor is the Houtzdale Municipal Authority, a Pennsylvania Municipal Authority, duly organized under the provisions of the Act as hereinabove specified with its

principal office located at 561 Kirk Street, P. O. Box 97, Houtzdale, Pennsylvania, 16651, (the "Condemnor").

2. The interest in the property hereinafter described is hereby condemned in fee simple or absolute title by the Condemnor, in general, for purposes of expanding and enhancing the water supply, water storage and water distribution system pursuant to specific Sections 5607(d)(15) and 5615(a) of the Act and the Eminent Domain Code, Act of June 22, 1964, P.L. 84, as amended, Article IV, Section 402, (26 P.S. 1-402 et. seq). The within condemnation has been authorized by a final Resolution of the Condemnor which was enacted the 15th day of June, 2005. A copy of said resolution is attached hereto and made a part hereof as Exhibit "A." The original may be examined at the address of the Condemnor.

3. The purpose of the condemnation is to provide for the general purposes hereinabove stated and for the specific purposes set forth below:

(a) To provide a site upon which to place a pump for purposes of pumping and distribution of the ground water and surface water sources of the Condemnor and to specifically enlarge, upgrade and renovate the water supply system, the water storage system, the water treatment system and the water distribution system of water capability, throughout the facilities operated by the Condemnor throughout the Moshannon Valley.

(b). To provide a pump site in order to distribute the water resource and to specifically enlarge, upgrade and renovate the water acquisition, water treatment, and water distribution system already approved for use in that locale and throughout the area of operations of the Condemnor throughout the Moshannon Valley.

(c). To provide a primary booster pump site to transmit water through the station to the proposed Henderson finished water storage tank while fulfilling the secondary task of replacing the function of the existing Ocean booster pump station by locating the station near the site of the present Ocean pump station and connecting the same to the existing piping along State Route 153. This pump station will lift finished water from the Houtzdale pressure zone to the Henderson

pressure zone via the proposed Henderson finished water storage tank, establishing a designed pumping rate of 210 gallons per minute (g.p.m.) representing the maximum daily demand flow rate of the Henderson pressure zone.

4. A description of the subject property being condemned, sufficient for its identification is set forth in the attached Exhibit "B" and map attached as Exhibit "C" and is more specifically described as that certain piece or parcel of real estate located in Brisbin Borough, Clearfield County, Pennsylvania, consisting of approximately .32 acres currently owned by the Condemnee and more particularly described in that certain Deed dated December 31, 1952, recorded in the office of the Recorder of Deeds in and for Clearfield County in Deed Book 426, Page 481, being Clearfield County Assessment Number 1-M14-10.

On the same day as this Declaration of Taking is being filed with the Prothonotary, plans showing the property condemned are being lodged for record in the office of the Recorder of Deeds of Clearfield County, Pennsylvania, in accordance with Section 404 of the Eminent Domain Code, 26 P. S. §1-404.

5. The nature of the title acquired in and to the property is a fee simple or absolute title of the subject property described in the exhibits attached hereto.

6. A plan showing the condemned property may be inspected at the office of the Condemnor which is located at 561 Kirk Street, Houtzdale, Pennsylvania.

7. The Condemnor files with this Declaration of Taking an open ended bond without surety pursuant to Section 403(a) of the Eminent Domain Code 26 P.S. §1-403(a). Just compensation is made or secured by the filing of said bond and pursuant to the pledge of Authority assets and collateral as set forth in the Resolution, Bond and this Declaration of Taking. A copy of the bond is attached hereto as Exhibit "D" and has or is to be filed in the Court of Common Pleas of Clearfield County and stands as collateral for the reasonable value of the property estimated to be in an

amount not to exceed \$1,500.00 as established by a real estate agent qualified to perform valuations in condemnation proceedings.

HOUTZDALE MUNICIPAL AUTHORITY

BY James H. M. Quisen
Chairman

ATTEST:

Robert W. Jones
Secretary

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 H. M. Givens

Dated: June 15, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
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AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-860-CD

EMINENT DOMAIN

FILED
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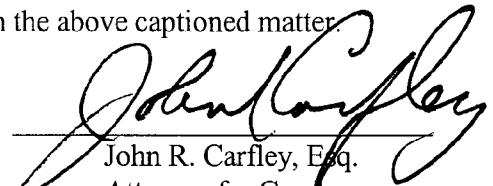
William A. Shaw
Prothonotary/Clerk of Courts

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

CERTIFICATE OF SERVICE

Please file the attached Affidavit of Process Server in the above captioned matter.


John R. Carfley, Esq.
Attorney for Condemnor
PA ID #17621
P. O. Box 249

AFFIDAVIT OF PROCESS SERVER

Court of Common Pleas of Clearfield County

(NAME OF COURT)

Clearfield Municipal Authority
PLAINTIFF/PETITIONER

vs. Machipongo Lands Corp. 2005-860-Q
DEFENDANT/RESPONDENT

CASE #

I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action. And that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Machipongo Lands Corp.

with the (documents)

by serving Ray Puestley II
NAME
at Home 500 Ruskin Drive Altoona Pa 16602 RELATIONSHIP

Business

JUNE 23, 2005 at 6:00 PM

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
from _____ CITY STATE DATE

Manner of Service: By personally delivering copies to the person/authorized agent of entity being served.

By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof.

By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household 18 or older and explaining the general nature of the papers.

By posting copies in a conspicuous manner to the address of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s).

Unknown at Address Evading
 Address Does Not Exist Service Cancelled by Litigant Moved, Left no Forwarding
 Unable to Service in a Timely Fashion Other

Service Attempts: Service was attempted on () _____ DATE _____ TIME _____ () _____ DATE _____ TIME _____ () _____ DATE _____ TIME _____
() DATE TIME () DATE TIME () DATE TIME

Description:

Age 50 Sex M Race Wh Hgt. 5'10" Wgt. 200 Hair Gray Glasses ✓

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on 6-24-05
at Clearfield CITY STATE DATE

State of Pennsylvania
County of Clearfield

Sworn to and subscribed before me this 29 day of June 2005

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Earl E. Butler, Notary Public
Lawrence Twp., Clearfield County
My Commission Expires Aug. 20, 2008
Member, Pennsylvania Association Of Notaries

SIGNATURE OF PROCESS SERVER

Earl E. Butler
NOTARY PUBLIC

AFFIDAVIT OF PROCESS SERVER

Court of Common Pleas of Clearfield County

(NAME OF COURT) Charles B Jones

Houtzdale Municipal Authority

PLAINTIFF/PETITIONER

vs. Machipongo Land & Con Co

2005-860-CJ

DEFENDANT/RESPONDENT

CASE #

I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action. And that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served _____

with the (documents)

by serving _____ NAME _____ RELATIONSHIP _____

at Home _____

Business _____

on _____

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
from _____ DATE _____

CITY STATE

Manner of Service: By personally delivering copies to the person/authorized agent of entity being served.

By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof.

By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household 18 or older and explaining the general nature of the papers.

By posting copies in a conspicuous manner to the address of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s).

Unknown at Address Evading
 Address Does Not Exist Service Cancelled by Litigant Moved, Left no Forwarding Other DEAD
 Unable to Service in a Timely Fashion

Service Attempts: Service was attempted on (✓ 6-23-05 4:30 PM) () DATE TIME () DATE TIME () DATE TIME
() DATE TIME () DATE TIME () DATE TIME

Description:

Age _____ Sex _____ Race _____ Hgt. _____ Wgt. _____ Hair _____ Glasses _____

I declare under penalty of perjury that the information contained herein is true and correct and this affidavit was executed on 6-24-05
at Clearfield, PA DATE
CITY STATE

SIGNATURE OF PROCESS SERVER

State of Penn
County of Clearfield

Sworn to and subscribed before me this 24th day of June, 2005

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Earl E. Butler, Notary Public
Lawrence Twp., Clearfield County
My Commission Expires Aug. 20, 2008

Member, Pennsylvania Association Of Notaries

NOTARY PUBLIC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A No.: 2005-860-CD
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO. Type of Case:
PENNSYLVANIA, BY THE HOUTZDALE Eminent Domain
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF Type of Pleading:
ENHANCING THE EXISTING WATER Petition to Compel
RESOURCES OF THE HOUTZDALE MUNICIPAL Filed on behalf of:
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING, Counsel of Record for this
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR
Party:
John R. Carfley, Esq.
P. O. Box 249
Philipsburg, PA 16666
814-342-5581
PA I.D. #: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

FILED 2cc
01/11/01
SEP 07 2005 Atty Carfley
6K

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

PETITION TO COMPEL

AND NOW comes the Condemnor, Houtzdale Municipal Authority, which by and through its attorney, John R. Carfley, Esq., petitions this Court for an Order compelling the Condemnee, or the Court's designee, to take certain action consistent with the provisions of the Eminent Domain Code, and in support thereof, aver as follows:

1. The Condemnor is the Houtzdale Municipal Authority, a municipality organized under the provisions of the Municipalities Authorities Act of 1945, as amended.
2. The Condemnee is Machipongo Land and Coal Company, Inc., the owner of a certain piece or parcel of land situate, lying and being in Clearfield County, Pennsylvania, more particularly identified in the Declaration of Taking which constitutes a part of this proceeding and which is the subject of the action filed to the above term and number.
3. The Declaration of Taking previously identified was filed in the above matter on June 17, 2005.
4. HMA has acquired possession of the subject tract pursuant to Section 407 of the Eminent Domain Code.
5. In order to acquire and utilize the acreage as specified in the Declaration of Taking, it will be necessary to secure subdivision approval through the local Planning Commission and the Clearfield County Planning Commission.
6. The applications to secure approval of the subdivision plan have been prepared by Yost Consulting Engineers and have been signed by the appropriate officials of the Houtzdale Municipal Authority, however the landowner/condemnee has refused to cooperate with the Condemnor in order to complete this process of subdivision.
7. Efforts have been made by the engineers to contact counsel for the Condemnees to acquire this approval, but counsel has stated that said cooperation will be withheld pending a final agreement on the fair market value to be paid by the Condemnor to the Condemnee for the condemned property.

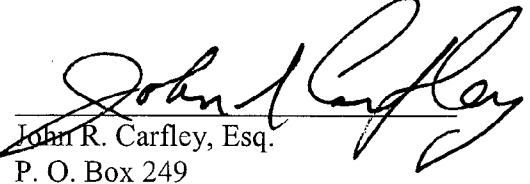
8. It is believed and therefore averred that said Condemnee is utilizing its ownership position to stall the normal condemnation process without cause and without legal justification.

9. It is believed, and therefore averred, that an agreement as to the amount specified as fair market value for the premises is not a condition precedent to completing other aspects of the condemnation action including, but not limited to, the filing and approval of the process of subdivision.

10. It is further believed and averred that under Section 407 of the Eminent Domain Code, the Condemnor is entitled to possession of the premises upon tender of the estimated fair market value, which sums are received pro tanto by the Condemnee notwithstanding the fact that the ultimate determination of fair market value is a matter to be determined by the Board of View in due course.

WHEREFORE, Condemnor requests this Honorable Court to enter an Order directing Condemnee to appear and show cause why the Condemnee should not be ordered to execute the documents necessary to effect the subdivision application, or in the alternative, to appoint the Recorder of Deeds and/or the Prothonotary, or such other assignee as the Court should so determine, to execute the required documents in their stead. Condemnor further requests this Honorable Court to enter an Order directing Condemnee to pay all reasonable costs associated with the preparation, presentment and

litigation of this Petition to Compel, which reasonable fees and costs should not exceed
\$2,500.00.


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

Dated: September 6, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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RESOURCES OF THE HOUTZDALE MUNICIPAL
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HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Petition to Compel filed on behalf of Plaintiff by placing the same in the United States Mail, regular service to the following by first class U.S. mail, postage prepaid on September 7th, 2005.

Nathan W. Karn, Esq.
EVEY ROUTCH BLACK
P. O. Box 415
Hollidaysburg, PA 16648-0415

John R. Carfley, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
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HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

RULE RETURNABLE

AND NOW, this 8th day of September, 2005, upon

consideration of the Petition to Compel of Houtzdale Municipal Authority, Condemnor, a rule is granted upon Machipongo Land & Coal Company, Condemnee, to show cause why the prayer of said Petition should not be granted.

FILED 2cc
01 3 06 PM Atty Casley
SEP 08 2005 (60)

William A. Shaw
Prothonotary/Clerk of Courts

Rule returnable the 13th day of October, 2005, at 9:30 A.M. in
Courtroom Number 1, Clearfield County Courthouse, Clearfield, Pa. for hearing
thereon.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Judge J. C. Zimmerman". The signature is fluid and cursive, with "Judge" on the first line, "J." on the second line, and "C. Zimmerman" on the third line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO. Type of Case:
PENNSYLVANIA, BY THE HOUTZDALE Eminent Domain
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR
Counsel of Record for this
John R. Carfley, Esq.
P. O. Box 249
Philipsburg PA 16866
814-342-5581
PA I.D. #: 17621

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

FILED *NO*
d 2 28 2005 *cc*
SEP 21 2005 *OK*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

PETITION OF CONDEMNOR FOR WRIT OF POSSESSION

The Petition of Houtzdale Municipal Authority (“Condemnor”) pursuant to §407(a) of the Eminent Domain Code, 26 P.S. §1-407, represents:

1. A Declaration of Taking was filed on June 17, 2005 at the above court term and number in the Court of Common Pleas of Clearfield County.
2. Included in the Declaration of Taking was property owned by Machipongo Land & Coal Company, ("Condemnee") and located in Woodward Township, Clearfield County,

Pennsylvania ("Property").

3. On August 12, 2005, Condemnor made Condemnee a written offer to pay Condemnor's estimate of just compensation for Condemnee's real estate in the amount of \$209.00.

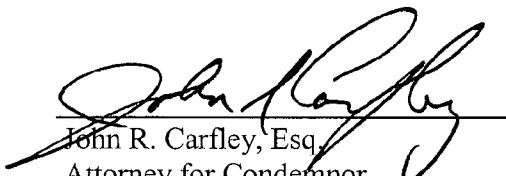
A copy of the written offer is attached as Exhibit "A."

4. On August 12, 2005, Condemnor notified Condemnee in writing that it must vacate the property pursuant to the said Notice. A copy of the notice to vacate is also included in Exhibit "A."

5. Notwithstanding its receipt of the notice to vacate, Condemnee has withheld and continues to withhold possession of the property from Condemnor.

6. Condemnor is entitled to possession of the property, conditioned upon payment to the Prothonotary of Condemnor's estimate of just compensation in the amount of \$209.00 for the use and benefit of Condemnee as its interest may appear.

WHEREFORE, Condemnor requests that this Court grant a rule upon Machipongo Land & Coal Company, Condemnee, to show cause why a writ of possession should not issue conditioned upon payment to the Prothonotary of \$209.00 for the use and benefit of Machipongo Land & Coal Company, as its interest may appear.



John R. Carfley, Esq.
Attorney for Condemnor
ID# 17621
P. O. Box 249
Philipsburg, PA 16866
(814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

ORDER

AND NOW, this _____ day of _____, 2005, upon consideration of the Petition of Houtzdale Municipal Authority for a rule to show cause why a writ of possession should not issue, it is hereby ordered that the rule is made absolute and a writ of possession shall issue for the property located in Woodward Township, Clearfield County, Pennsylvania, against Machipongo Land & Coal Company upon payment to the Prothonotary of the sum of \$209.00 from Houtzdale Municipal Authority for the use of

Machipongo Land & Coal Company as its interest may appear, without any commissions or fees deductible therefrom.

BY THE COURT,

J.

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

August 12, 2005

Ray Pursley, II, President
Machipongo Land & Coal Co.
500 Ruskin Drive
Altoona, PA 16602

Re: Declaration of Taking filed on June 17, 2005
No. 2005-860-CD

Dear Mr. Pursley:

The time specified under Section 406 of the Eminent Domain Code for the filing of Preliminary Objections has expired. Since no Preliminary Objections were filed, the Condemnor is entitled to possession or right of entry to the property upon payment or tender of a written offer of payment to the Condemnee for the amount of just compensation owed the Condemnee for the property interest acquired as estimated by the Condemnor or its expert.

In the instant case, the Condemnor estimates the value of the property right consisting of a pump station, .32 acres in area, (14,118 sq. feet, more or less) to be \$209.00.

The procedures for delivery of possession and right of entry are specified in Section 407 of the Eminent Domain Code which specifies the procedure for the Condemnor to utilize the property upon payment to the Condemnee, or to the Court of such estimated just compensation as is appropriate and/or as the Court may so direct. It would obviously be preferable and more expedient if you were to simply execute a Deed and Right of Way Agreement conveying the respective property rights to the Condemnor while reserving your right to challenge the fair market value assessed for the ownership interest acquired if you dispute the amount estimated by the Condemnor and/or its expert. You have already been provided with a copy of the Declaration of Taking. In addition, a Memorandum explaining your rights as a Condemnee under the Eminent Domain Code is enclosed herewith for your reference.



Ray Pursley, II, President
August 12, 2005
Page 2

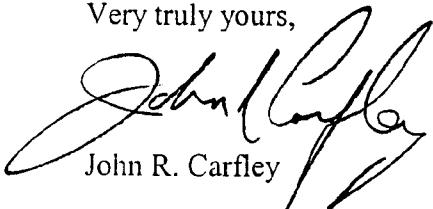
One of the most important rights specified in the Memorandum is your right to receive payment per acre for the total property condemned, which amount has been estimated at \$209.00, the amount to which the Authority's expert calculates you are entitled as just compensation for the condemnation of these property rights. This payment will be made to you pro tanto, without jeopardizing your right to request the appointment of a Board of View to determine the amount of damages to which you are entitled. I would hope that you would take this opportunity to apply for the payment of the estimated fair market value for the property. We further urge you to sign the necessary papers so we can process your payment without delay.

If you do not apply for your payment within fifteen (15) days, the money will be deposited into Court, where it will be held for you without interest. The money thus deposited may then be withdrawn only upon application to the Court.

Even though we have had to file a Declaration of Taking and even after payment to you or into Court of our estimate of just compensation we remain willing and anxious to discuss your claim with you. If you have any questions regarding your claim, the condemnation procedure or your rights under the Eminent Domain Code, an agent for HMA will be glad to discuss them with you.

It is, of course, our primary aim to settle your claim; however, it is also our responsibility to see that you are fully advised of your rights and how to protect them.

Very truly yours,



John R. Carfley

JRC:bjn

Enclosures

cc: Houtzdale Municipal Authority
Nathan Karn, Esq.

HOUTZDALE MUNICIPAL AUTHORITY

MEMORANDUM OF LAW

YOUR RIGHTS AS A CONDEMNEE UNDER THE EMINENT DOMAIN CODE

If the Authority is unable to purchase from any owner the right of way it needs to improve or construct its water system, the Eminent Domain Code requires that the necessary interest be acquired from the property owner by filing a Declaration of Taking in the Court of Common Pleas of the County in which the property is located. Any property owner or other person with a property interest may, within 30 days of being served with notice of the filing of the Declaration of Taking, file Preliminary Objections in Court to challenge the power or right of the Authority to appropriate the property, the procedure followed by the Authority on the Declaration of Taking as prescribed by the law for the filing of the Declaration of Taking.

When the Authority acquires a right of way, it is obligated to pay "just compensation" for the required interest. Just compensation is measured by comparing the value of the entire property before the taking with the value of the property remaining after the taking. The difference under Pennsylvania law is just compensation. (Note that in some cases the value of the property remaining after the taking may be as high as or even higher than the value of the entire original property. In such a case the Authority is considered to have provided just compensation by thus increasing the value of the remaining land, and is not required to pay money damages.)

Upon the filing of the Declaration of Taking, the Authority offers to each condemnee, as a payment on account, the amount of damages estimated by the Authority to be just compensation for the condemned property. This payment is made without in any way jeopardizing the condemnee's right to petition the Court to appoint a Board of Viewers to determine the amount of damages to which he or she may be entitled.

If the condemnee refuses to accept the payment on account, the Authority will pay the money into court. The court will hold the money for the condemnee --without interest--until the condemnee petitions for its release.

Under the law, mortgagees and other lienholders, as of the date of condemnation or appropriation, are entitled to payment on a pro-rata basis out of the proceeds of any condemnation; thus some or all of the payment on account may have to be paid to one or more lienholders, who, of course must credit the condemnee for any amount thus paid.

After the filing of a Declaration of Taking, either the Authority or any condemnee may petition the Court to appoint viewers to determine the amount of damages due the owner and any other person with a property interest. The viewers will visit the property and hold one or more hearings to give each condemnee and his or her witnesses and the Authority's witnesses an opportunity to testify as to the amount of damages. The Viewers' Award is final-- and the Authority will be required to pay the difference between the amount of the Award and any amount previously paid on account--unless it is appealed by either party within thirty (30) days of the filing of said Award. If the Award is appealed, either party may demand that the case be tried before a jury; otherwise, a Judge sitting without a jury will try the case. The jury's verdict or the opinion of the Judge sitting without a jury will be considered final unless a Motion for a New Trial is filed with the Court of Common Pleas, and upon denial of said motion, a final appeal will be available to the Appellate Courts of Pennsylvania by either party.

Ordinarily, the Authority will not petition for viewers until the construction project is completed. The Authority may petition for viewers when a house or other substantial building is taken or a property is taken in its entirety. The Authority believes that, in the case of a partial taking, the possibility of an amicable conclusion of the case should be held open until the condemnee has had the opportunity to see the effect of the construction on his or her remaining property.

The Eminent Domain Code does not require the Authority to petition for viewers, and, therefore, the Authority does not petition in all cases. If the condemnee wishes to petition for viewers, the petition must be filed within five (5) years from the date that the Authority paid to the condemnee estimated just compensation or the date that the Authority deposited the estimated just compensation into court. If the petition for viewers is not filed before the expiration of this five (5) year period, the payment or deposit of estimated just compensation shall constitute full satisfaction of the damages.

It is hoped that the above summary of your rights and procedures under the Eminent Domain Law of Pennsylvania will be of some help in determining the course of action you wish to take with regard to your claim.

The above statement of the rights available to a condemnee under the Eminent Domain Code is the opinion of counsel for the Authority and should be viewed as a summary of the condemnee's rights and not an exhaustive statement of the rights and procedures under the Eminent Domain Code.

This advice of counsel should also not be substituted for the advice that may be provided to a condemnee by independent counsel retained to represent the exclusive interest of the condemnee in this proceeding. Should the condemnee opt to exercise any of the rights hereinabove stated it is important to remember that the condemnee does have the right to be represented by an attorney of his or her own choosing.

COUNSEL FOR HOUTZDALE MUNICIPAL AUTHORITY

JOHN R. CARFLEY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
FOR THE EXPLICIT PURPOSE OF
ENHANCING THE EXISTING WATER
RESOURCES OF THE HOUTZDALE MUNICIPAL
AUTHORITY THROUGH THE EXPANSION
OF THE WATER DISTRIBUTION SYSTEM
OF GROUND WATER AND SURFACE WATER
AND FOR OTHER PURPOSES INVOLVED IN
THE UPGRADING AND RENOVATION OF ITS
WATER TREATMENT, WATER STORAGE
AND WATER DISTRIBUTION SYSTEMS, INCLUDING,
BUT NOT LIMITED TO, THE SPECIFIC GOAL OF
LIFTING FINISHED WATER FROM THE
HOUTZDALE PRESSURE ZONE TO THE
HENDERSON PRESSURE ZONE VIA THE PROPOSED
HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-860-CD

EMINENT DOMAIN

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

APPLICATION FOR PAYMENT OF ESTIMATED JUST COMPENSATION

1. Application is hereby made for payment of Two Hundred Nine and 00/100 (\$209.00) Dollars, the amount estimated by the Authority to constitute just compensation for damages which will accrue to the above property (or the interest of the APPLICANT(S) therein) as a result of the above condemnation. In accordance with Section 407 of the Eminent Domain Code of 1964, the

aforesaid payment will be made and received without prejudice to the rights of either the AUTHORITY or the APPLICANT(S) to proceed to a final determination of just compensation by filing a petition for the appointment of viewers within five (5) years of the date of this payment. The payment shall be considered only as payment pro tanto of just compensation as finally determined, it being understood that the AUTHORITY shall pay to the APPLICANT(S) the difference between the aforesaid amount and any higher amount which may be finally determined.

The AUTHORITY does not require actual physical possession of the property until either the start of construction or written notice that possession is required (whichever occurs earlier) and until such time, APPLICANT(S) remain(s) in possession with the right to use the property in such manner as will not result in physical or other change to the contour or nature of the property; further APPLICANT(S) shall not erect or install any improvements on the property.

Witness _____ (SEAL)

Witness _____ (SEAL)
Condemnee

FINAL ESTIMATED SETTLEMENT STATEMENT

CLAIMANT:

LOCATION (ADDRESS) OF PROPERTY:

Final Settlement or Estimated Just Compensation \$209.00

The distribution of funds as shown above is approved and the "Balance due Claimant(s)" is acknowledged to be correct. I hereby acknowledge receipt of a copy of this settlement statement.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
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CONDEMNOR

No.: 2005-860-CD

EMINENT DOMAIN

FILED *09/26/05 Amy*
SEP 26 2005 *Carley*
William A. Shaw
Prothonotary/Clerk of Courts

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

RULE

AND NOW, this 23rd day of September, 2005, upon consideration of
the Petition of Houtzdale Municipal Authority, a rule is granted upon Machipongo Land
& Coal. Company to show cause why a writ of possession shall not issue conditioned
upon payment to the Prothonotary of \$209.00 for the use of Machipongo Land & Coal
Company without any commissions or fees deductible therefrom, as its interests may
appear.

Rule returnable the 27th day of September, 2005, at 10:30
9 m., Room No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

James J. Cunneman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
PENNSYLVANIA, BY THE HOUTZDALE
MUNICIPAL AUTHORITY FOR PURPOSE OF
CONSTRUCTING A BOOSTER PUMP STATION
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HENDERSON FINISHED WATER STORAGE TANK,
CONDEMNOR

No.: 2005-860-CD

EMINENT DOMAIN

FILED *2cc*
014:00801 AMY
SEP 29 2005 Castley

William A. Shaw *OK*
Prothonotary/Clerk of Courts

VS.

MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

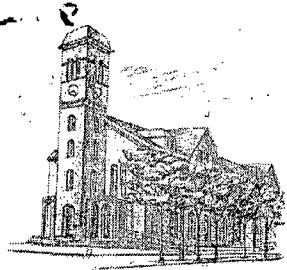
RULE

AND NOW, this 29th day of September, 2005, upon consideration of
the Petition of Houtzdale Municipal Authority, a rule is granted upon Machipongo Land
& Coal. Company to show cause why a writ of possession shall not issue conditioned
upon payment to the Prothonotary of \$209.00 for the use of Machipongo Land & Coal
Company without any commissions or fees deductible therefrom, as its interests may
appear.

Rule returnable the 13th day of October, 2005, at 9:30
9. m., Room No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

Judie J. Grinnerman
J.

NO. 2005-860-CD



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

THE CONDEMNATION IN FEE SIMPLE, OF A
TRACT OF LAND CONSISTING OF
.32 ACRES, (14,118 SQ. FEET), MORE OR LESS,
SITUATE IN BRISBIN BOROUGH, CLEARFIELD CO.
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No.: 2005-860-CD

EMINENT DOMAIN

FILED 2005 Oct 13 AM
Clerk of Courts

John A. Shaw
Prothonotary/Clerk of Courts

VS.

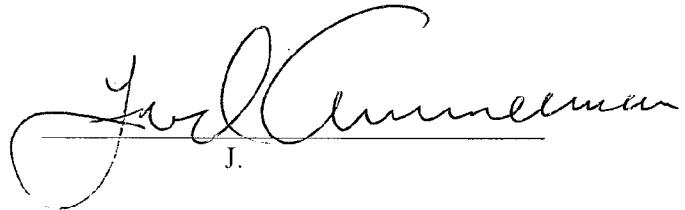
MACHIPONGO LAND & COAL COMPANY,
CONDEMNEE

ORDER

AND NOW, this 13th day of October, 2005, upon consideration
of the Petition of Houtzdale Municipal Authority for a rule to show cause why a writ of
possession should not issue, it is hereby ordered that the rule is made absolute and a writ
of possession shall issue for the property located in Woodward Township, Clearfield
County, Pennsylvania, against Machipongo Land & Coal Company upon payment to the
Prothonotary of the sum of \$209.00 from Houtzdale Municipal Authority for the use of

Machipongo Land & Coal Company as its interest may appear, without any commissions or fees deductible therefrom.

BY THE COURT,



A handwritten signature in black ink, appearing to read "J. Cunnellman". The signature is fluid and cursive, with a horizontal line underneath the name. A small dot is positioned below the line, to the right of the signature.