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ENVIRONMENTAL RESOURCES & ENERGY

\* \* \* \* \*

IN RE: House Bill 1735

PUBLIC HEARING

\* \* \* \* \*

BEFORE: GEORGE BUD CAMILLE, Chair  
E. Thomas Kuhn, Executive Director  
Scott E. Hutchinson, Chairman  
Lisa Bennington, Member  
Richard R. Stevenson, Member  
Ron Miller, Member  
Dave Reed, Member  
Tom Yewcic, Member  
Joseph Deklinski, Executive Director  
Jessie Stairs, Member  
HEARING: Thursday, August 30, 2007  
1:00 p.m.  
LOCATION: University of Pittsburgh  
Living/Learning Center  
450 Schoolhouse Road  
Johnstown, PA 15904

Reporter: Alicia Brant

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W I T N E S S E S

01

02

03 George Ellis

04 Stephen Rhoads

05 Craig Mayer

06 Louis D'Amico

07 Ray Sleppy

08 James Kleissler

09 Beverly Braverman

10 Barry Tuscano

11 Robert Davis

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21

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01	I N D E X	
02		
03	OPENING REMARKS	
04	By Chairman George	5 - 9
05	TESTIMONY	
06	By Mr. Ellis	9 - 16
07	By Mr. Mayer	17 - 20
08	By Mr. Rhoads	20 - 26
09	By Mr. D'Amico	26 - 32
10	QUESTIONS	32 - 60
11	TESTIMONY	
12	By Mr. Sleppy	60 - 68
13	By Mr. Kleisser	68 - 74
14	By Ms. Braverman	74 - 84
15	By Mr. Tuscano	84 - 89
16	By Mr. Davis	89 - 95
17	QUESTIONS	95 - 108
18	CLOSING REMARKS	
19	By Chairman George	108 - 110
20	CERTIFICATE	111
21		
22		
23		
24		
25		

01                                E X H I B I T S

02

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Page

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## 01 P R O C E E D I N G S

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03 CHAIR:

04 I thank everyone that traveled,  
05 especially far, to give testimony. The agenda today  
06 will be very specific. A wide range of difference of  
07 opinions have resulted in the time among certainties  
08 surrounding the development of coal bed methane, so  
09 for estate owners find themselves facing pending coal  
10 bed methane development and it's associated wells and  
11 pipelines and access roads without any say in the  
12 development or compensation from the lower property  
13 values.

14 The purpose of this hearing will be the  
15 list of testimony on the extraction of coal bed  
16 methane in general and House Bill 1735. And the main  
17 sponsor is a gentleman, Mr. Yewcic, from Cambria  
18 County. He's with us today. They will be taking up  
19 specifically, in particular this proposed legislation  
20 amending Title 27 environmental resources of  
21 Pennsylvania to provide appropriate definition  
22 regarding proposing drilling for methane. He'll also  
23 provide for surface use and damage agreements, which  
24 may include a compensation for surface damage and loss  
25 land value.

01           If the surface owner and the operator  
02 cannot reach an agreement within 45 days of the  
03 required notice, the operator will be required to  
04 place the amount of his last offer to the surface  
05 owner in escrow and the parties may apply to the Court  
06 of Common Pleas for an order establishing surface  
07 guidelines and reasonable compensation for damage. If  
08 I may, I would like to turn to my Republican Chairman,  
09 my colleague, Mr. Hutchinson from Venango County. Mr.  
10 Hutchinson.

11           MR. HUTCHINSON:

12           Thank you, Mr. Chairman. It's a pleasure  
13 to be here today. This obviously is an issue that has  
14 been wrestled with for several years now. It is an  
15 issue that I have personally worked on under some  
16 different positions, I've held within the General  
17 Assembly for several years now. It keeps pumping back  
18 to surface. We have several pieces of legislation  
19 that have been introduced, specifically House Bill  
20 1735, which is before us today. I look forward to a  
21 lively discussion and lots of information today, and I  
22 thank you for this opportunity to be here today.

23           CHAIR:

24           Ladies and gentleman, if I may, I'd like  
25 to give a couple of minutes to the sponsor of the

01 legislation, a gentleman from Cambria. Mr. Yewcic.

02 MR. YEWICIC:

03 Thank you. I'd like to thank, first of  
04 all, the University of Pittsburgh for allowing us to  
05 have a hearing here, and Chairman and Scott Hutchinson  
06 for having this hearing. Providing the surface use  
07 agreements has been contentious, to say the least, in  
08 certain areas of Pennsylvania.

09 UNIDENTIFIED SPEAKER:

10 I can't hear.

11 MR. YEWICIC:

12 I'd like to thank everyone for coming.  
13 The surface use agreement certainly has been a  
14 contentious issue in certain parts of Pennsylvania.  
15 This legislation, of course, is intended to provide  
16 some remedy to the problem at hand, and enforce an  
17 agreement between the surface --- the operator and the  
18 surface agreement. As you all know, Pennsylvania is a  
19 separate state. Both parties have ownership, surface  
20 ownership, and mineral ownership. Both have rights to  
21 their property, and that's where the problem arises.

22 And hopefully we can work this  
23 legislation to come to a resolution, at least make  
24 some most people happy, I don't think we're going to  
25 make everyone happy. We're going to try to work

01 through this and see what the outcome is. Mr.  
02 Chairman.

03 CHAIR:

04 I'd like to thank, gentlemen. Before we  
05 commence I'd like the opportunity to thank the members  
06 who I'm sure are very busy. The gentleman who isn't a  
07 member of the committee, but happened to be a chairman  
08 of the Education Committee from Westmoreland County,  
09 and next to him is a gentleman, Representative Miller,  
10 from York County. And again, gentleman, Mr.  
11 Hutchinson from Venango County. Gentlemen, Mr. Yewcic  
12 from Cambria, and the lady to his left Representative  
13 Bennington from Allegheny County.

14 I'm going to ask that the members of the  
15 panel that will be providing testimony will keep it  
16 within the limited range that we have discussed, and  
17 the redundancy will help us to get to the point where  
18 we're going to be helpful and get this thing moving.  
19 And I would ask the members when they ask questions of  
20 the panel that they would, indeed, make their  
21 questions relevant and in a manner where the panel  
22 could answer them yes or no rather than a long  
23 testimony that would be redundant.

24 So without any further hesitation, I will  
25 turn to the gentleman, Mr. Ellis, who sits on the



01 panel. Mr. Ellis is the president of the Pennsylvania  
02 Coal Association. If you will, we're not going to  
03 swear in today as we did on to prior instances, we're  
04 just going to take your testimony. The gentleman, Mr.  
05 Ellis.

06 MR. ELLIS:

07 Thank you. Chairman George, Chairman  
08 Hutchinson, committee members, good afternoon. My  
09 name is George Ellis, and I'm with Pennsylvania Coal  
10 Association. With me today are Gary Slagel, Director  
11 of Government Affairs for Consol Energy, and Sam Cario  
12 Vice President of the Pennsylvania Surfaces  
13 Corporation, directly behind me. Their companies have  
14 affiliates directly involved in methane production and  
15 are here to assist in answering any technical  
16 questions you may have.

17 We appreciate this opportunity to provide  
18 the Committee with the coal industry's perspective on  
19 issues relating to CBM ownership and development on  
20 House Bill 1735. Because we believe that respective  
21 rights and obligations of CBM owners and surface  
22 owners have been fairly and equitably established by  
23 longstanding common law principles, and that House  
24 Bill 1735 would upset the balance of those rights,  
25 that are created by principles, respectively opposes

01 this bill.

02           As an alternative we ask the Committee to  
03 consider the merits of House Bill 132, a measure  
04 introduced by Representative Tom Yewcic earlier in  
05 this session, that codifies the correlative property  
06 rights relating to coal bed methane.

07           That being said, PCA stands ready to work  
08 with the Committee to seek some middle ground can be  
09 worked out between the two bills.

10           Questions regarding who owns the rights  
11 to coal bed methane and how those right are reconciled  
12 with those of the surface owner are not new to  
13 Pennsylvania. The former question on ownership was  
14 answered in 1983 by a Pennsylvania Supreme Court  
15 Decision which held that whoever owns coal also owns  
16 the coal bed methane. The latter question relating to  
17 how the rights of coal bed methane owners play out  
18 vis-à-vis the surface owners' rights was addressed by  
19 a legislative committee's inquiry in 2003, which was  
20 alluded to by Chairman Hutchinson.

21           In response to those, at that time  
22 complaints were made to legislators, alleging that the  
23 rights of surface owners were being trampled by those  
24 who owns the rights to the coal bed methane. In  
25 response to those allegations Joint Legislative Air

01 and Water Pollution Control Committee conducted a  
02 year-long study of the allegations and issues  
03 surrounding development. The Committee found that  
04 Pennsylvania's current property law is well  
05 established and strikes an appropriate balance among  
06 the rights of landowner, coal owner and driller. As a  
07 result, the report discouraged the introduction of  
08 legislative proposals that would radically alter those  
09 rights.

10 Most of the legal questions at issue are  
11 answered by longstanding rules of Pennsylvania  
12 property law and turn on the specific language of  
13 agreements, establishing the relationship between coal  
14 owners, surface owners, CBM developers and  
15 conventional oil and gas developers.

16 In Pennsylvania common law recognizes  
17 three estates in land, namely mineral, surface and  
18 right of support, and these estates may be owned by  
19 different persons. When a mineral, for example, is  
20 purchased from the owners of the land by another  
21 person, a separate estate in land is held by that  
22 person, and these transactions create separate coal  
23 estates are referred to as severances. Indeed, a  
24 severed coal estate is subject to separate assessment  
25 of real estate taxes, which provides a significant

01 source of revenue to local governments. Once the  
02 mineral is severed, the mineral owner has a property  
03 interest that is entitled to the same level of  
04 constitutional protection as any other estate in land.

05           The coal bed methane ownership issue was  
06 definitively resolved by a Pennsylvania Court in Hoge,  
07 where the Court expressly held, such gas as is present  
08 in coal must necessarily belong to the owner of the  
09 coal, so long as it remains within his property and  
10 subject to his exclusive dominion and control. Thus  
11 in the vast majority situations in Pennsylvania, the  
12 owner of the coal owns the coal bed methane and has  
13 the right to develop it.

14           A number of provisions contained in House  
15 Bill 1735 interfere with that rule, particularly  
16 requirement for a surface use agreement to be in place  
17 prior to obtaining a permit or setting up an escrow  
18 account. And a broad compensation requirement that  
19 goes beyond the scope of surface repairs.

20           Not only do these provisions alter our  
21 property rights and hinder our access resource, but  
22 they will also inevitably lead to permit delays or  
23 denials and open the floodgates for endless legal  
24 challenges.

25           Under common law, the rights of the

01 mineral owner are substantially equal to those of the  
02 surface owner. 1735 upsets this balance by  
03 diminishing the former's rights by providing the  
04 latter with significant leverage in brokering any type  
05 of agreement.

06           The permitting process for any regulated  
07 industry is daunting and time-consuming. Permit  
08 applicants are under constant pressure to advance this  
09 process and obtain a permit as soon as possible.

10           Time is a premium, and under House Bill  
11 1735, the quickest way to obtain a permit is to  
12 negotiate a surface use agreement. Consequently, a  
13 permittee may be forced to make concessions beyond  
14 what's fair and reasonable, that absent the required  
15 agreement he would otherwise not make, to consummate  
16 the deal which expedites issuance of the permit. This  
17 is leverage that a surface owner currently doesn't  
18 possess and is not entitled to under Hoge and  
19 subsequent Court decisions.

20           Please understand, we are not trying to  
21 marginalize the legitimate concerns of surface owners  
22 whose land may be potential sites for well locations.  
23 Under existing common law, these individuals are  
24 provided a remedy. If their land is unnecessarily  
25 impaired by the drilling activity, the driller is

01 liable for the damage.

02           Since 1893 Pennsylvania Supreme Courts  
03 have recognized that the owner of severed gas has  
04 implied right to reasonable use of the surface  
05 necessary to access the gas without any obligation to  
06 compensate the surface owner. The right is implied  
07 because it would be unreasonable to assume that one  
08 would sell or reserve gas or coal without a means of  
09 access. This implied right was identified by the  
10 courts as a property right of an easement or servitude  
11 on the surface for the benefit of the owner of the  
12 severed coal or gas. The correlation between the  
13 rights of the CBM owners and surface owners and how  
14 properly law applies to each was explained by the  
15 Pennsylvania's Superior Court in its Decision in  
16 Hiltabidle.

17           In Hiltabidle, the Superior Court  
18 followed the Supreme Court's Decision in Hoge and  
19 recognized not only the coal owner's ownership of coal  
20 bed methane, but also a long established right of  
21 access to it through the overlying surface.

22           PCA supports concurrent development of  
23 mineral resources with due accommodations of surface  
24 owners' rights and interests. Our member companies  
25 involved in CBM development make every effort to enter

01 into a voluntary agreement with surface owners that  
02 reasonably accommodate the landowner's interest within  
03 the scope of court defined correlative property  
04 rights. Furthermore, our companies contact the  
05 landowner in advance of any drilling and work in good  
06 faith towards reaching a mutually satisfactory  
07 agreement on the location of roadways, pipeline routes  
08 and well locations. In addition, repair damage caused  
09 to landowner's property.

10 In my opening remarks I referred to House  
11 Bill 132, a coal bed methane-related bill whose  
12 genesis began in the prior session and was  
13 reintroduced this year as a possible alternative to  
14 House Bill 1735. Essentially, House Bill 132 codifies  
15 the common law doctrine based on the cases cited in my  
16 testimony.

17 It requires drillers, prior to submitting  
18 a permit well application, to notify the surface owner  
19 of his intent and try to reach accord on a location of  
20 the proposed wells and access roads. An agreement  
21 isn't required for an operator to proceed once he  
22 obtains a permit. He would still have right of access  
23 to the surface property without liability for damage,  
24 as long as his activity doesn't result in an  
25 unnecessary impairment to the existing surface.

01           It also requires the permittee to provide  
02           the surface owner with a complete copy of the permit  
03           application, which shows the proposed locations of the  
04           well and access roads. The provisions in House Bill  
05           132 were originally drafted by representatives of the  
06           coal, oil and gas industries in collaboration with  
07           Representative Yewcic and staff and Representative  
08           Bill DeWeese's office as a House floor amendment to  
09           House Bill 2619 in the prior session. The amendment  
10           was adopted by the full House and House Bill 2619  
11           subsequently passed the chamber, but died in the  
12           Senate.

13           That concludes my testimony. Thank you  
14           for the allowing me to present on this subject, and  
15           we'll be happy to try and answer your questions.

16           CHAIR:

17           All right. Thank you gentleman for your  
18           testimony. I will ask that we wait until all of the  
19           testimony before we turn it over to the Committee for  
20           questions. Before we go any further I'd like to thank  
21           the gentlemen, Representative Stevenson, who has  
22           traveled from Mercer County, and on his right is a  
23           gentleman, Representative Reed, from Indiana County.  
24           Thank you, gentlemen. And now the Committee will take  
25           the presentation of gentleman Steven Rhoads president



01 of Pennsylvania Oil and Gas Association. Mr. Rhoads.

02 MR. RHOADS:

03 Thank you, Chairman George, Chairman  
04 Hutchinson and members of the Committee. It's a great  
05 opportunity, and I appreciate this and to share our  
06 perspective on this legislation. With me to my right  
07 is Craig Mayer. Craig is an attorney, General Counsel  
08 with Pennsylvania General Energy. Craig is here. I'm  
09 going to turn the mic over to him to let him give his  
10 comments on the legal issues before us, and then I'll  
11 pick up after he's finished.

12 MR. MAYER:

13 Thank you very much. I would just take a  
14 few minutes and go over --- just outlined for you,  
15 essentially, this state of the law, hopefully in an  
16 objective fashion, as it can be presented.

17 First of all, I'd like to refer the panel  
18 to the paper that describes what's known as the  
19 Pennsylvania Accommodation Doctrine. And in fact,  
20 Pennsylvania was the first state in the country to  
21 actually establish that particular doctrine, almost a  
22 hundred years ago --- in fact, over a hundred years  
23 ago. And that's been in effect in the law for that  
24 period of time.

25 In my legal practice on behalf of an

01 exploration and production company, and I've gained a  
02 good deal of experience in dealing with split estate  
03 situations, federal lands, state lands, and private  
04 lands. The paper that I'm referring to cites  
05 involving case law that's governed this area of the  
06 law and the relationship between split-estate owners  
07 since at least 1893.

08 In short, in Pennsylvania mineral owners  
09 are required to act reasonably and within the  
10 description of the expressed or implied surface  
11 easement rights, and to secondly to accommodate  
12 surface owner by selecting any reasonable available  
13 option that has the least impact on a surface estate.  
14 That is the status of the law. If these principles  
15 are followed, then the mineral estate has no liability  
16 for the surface estate, and once any accommodation has  
17 been made, the mineral owner may proceed.

18 The instant surface rates legislation,  
19 House Bill 1735 proposes to create a totally new  
20 liability for mineral owners and to extinguish a  
21 previously held right. In so doing, it's my opinion  
22 that it violates the property clause and the contracts  
23 clause of both federal and state constitutions. And  
24 indeed, the new legislation was recently adopted by  
25 the Legislature 26 Pennsylvania Consolidate Statute

01 Section 2004 (sic), which prohibits the use of eminent  
02 domain for private business purposes. And I'll  
03 explain that briefly. I won't get into it in depth,  
04 but I'll explain it briefly.

05 In so doing, it's important in looking at  
06 these issues to step back from the detail of the  
07 legislation and look at what the law would, in fact,  
08 do. The law would first terminate all surface  
09 easements or rights of entry or access, in effect  
10 that's what occurred. The common law rights would be  
11 terminated and a new one would be substantive, as  
12 expressed in the law. And that would be done for a  
13 certain class of private mineral owners. It would  
14 then give the same class of private owners a right to  
15 purchase --- or more accurately, re-purchase, a new  
16 right of entry and use for the lands.

17 By any other name, this is the same as  
18 granting someone a right of eminent domain for  
19 condemnation. For example, could the legislature  
20 simply go and condemn the lands on behalf of the oil  
21 and gas company and then give the money to the private  
22 owners? Because it's for a private purpose, it's for  
23 the private purposes of the oil gas companies, not a  
24 public purpose. That's the point I'm making there.

25 In sum, the law impairs existing

01 contracts, takes a century-old common law property  
02 right away from mineral owners, and it basically  
03 distorts the state's provision against using eminent  
04 domain for private purposes.

05 The effect of the Act is basically to  
06 enrich the surface owners at the expense of mineral  
07 owners and developers. In addition, it doesn't appear  
08 that there's any true public purpose being served and  
09 therefore a valid basis to necessarily legislate.  
10 When the upshot of the legislation is simply adjusting  
11 rights between private parties. It does not promote  
12 the public interest in energy production, nor does it  
13 promote productivity or preservation of agricultural  
14 lands. It can all still go forward. It simply sets a  
15 new price at which land will be used by some party.  
16 The long and short of it, the Act requires a payment  
17 from one private party to another where none was  
18 previously required. Thank you very much.

19 CHAIR:

20 Thank you. Before we allow questions,  
21 again, we'll allow the panel to continue their  
22 presentation. And the next gentleman, Mr. Rhoads.

23 MR. RHOADS:

24 If I may, pick up where Mr. Mayer left  
25 off. While the Constitutional and common law issues

01 are of utmost importance here, there are other matters  
02 that need to be addressed as well. First, we feel  
03 it's important that we try to dispel concern that's  
04 been raised on many occasions over the last few years,  
05 one that is without foundation and raises a lot of  
06 alarm on landowners. And that is the rumor that coal  
07 bed methane wells are not regulated by Pennsylvania  
08 law. That simply is not true.

09           The Oil and Gas Act of 1984 established a  
10 comprehensive regulatory program governing the  
11 drilling operation of all oil and gas wells, including  
12 CBM wells. That contained a variety of provisions  
13 that are specifically designed to protect the surface  
14 owner's property from potential harm caused by coal  
15 bed methane operations.

16           There are two very important provisions  
17 in this Act I'd like to call your attention to in  
18 particular. One of them is something that Chairman  
19 George, again, is familiar with, because he was the  
20 author and prime sponsor of the amendment in 1983,  
21 under consideration and that is the rebuttal  
22 presumption that damages private water supplies. What  
23 this provision says is that if a water supply is  
24 damaged during the drilling or after drilling of a  
25 well, it is not the landowner's responsibility to go

01 to court and prove the driller damaged their water.

02 In fact, it is the driller's  
03 responsibility to go to DEP and prove that he did not  
04 damage the water. And the amendment that is sponsored  
05 by Representative George has very explicit procedures  
06 whereby both the surface owner and the driller are  
07 affected in the rebuttal presumption matter.

08 The second element in the Oil and Gas Act  
09 that's very important is a provision that allows  
10 surface owner's an opportunity to object to the well  
11 location and to seek a conference with DEP and the  
12 pertinent applicant to resolve by mutual agreement,  
13 any matter that's dealt with in the Oil and Gas Act.

14 The second point I would like to make is  
15 that the accommodation doctrine that Mr. Mayer  
16 reviewed for you is a matter of law that most  
17 producers understand and take very, very seriously.  
18 It's a routine matter for producers to contact the  
19 owner of the land upon which they intend to drill a  
20 well in advance of submitting a permit application.  
21 They understand the importance of early contact to the  
22 landowners to identify water wells and springs, high  
23 value farming fields, timber and other surface assets  
24 that are important to the landowner.

25 Early discussions with the surface owner

01 allow the producer to modify the drilling plans by  
02 placing well sites and pipelines, access roads and  
03 other earth disturbances on locations that cause as  
04 little intrusion or inconvenience to the landowner as  
05 possible.

06           As discussed by Mr. Mayer, the  
07 Commonwealth enjoys long-established principles of  
08 settled common law that recognize the rights and  
09 duties of different property interests when the  
10 surface is severed from the underlying mineral.  
11 Pennsylvania common law requires the coal bed methane  
12 operator to give the surface owner a reasonable  
13 advance notice of planned use for the surface for coal  
14 bed methane extraction.

15           That notice usually leads to a dialogue  
16 and some form of accommodation with the landowner over  
17 the coal bed methane owner's use of the land. It's  
18 difficult for us, in light of this long history of  
19 common law to make any recommendation on possible  
20 legislation to improve the scheme of things. One of  
21 the biggest threats that we fear from such legislation  
22 would be an attempt to overturn the common law  
23 doctrine of mineral estate dominance, that is  
24 explicitly built in House Bill 1735.

25           Ladies and gentlemen, there's a very good

01 reason, very good public policy reason, why the  
02 mineral estate has always been granted deference by  
03 the courts in conflicts between surface owners and  
04 developers of our indigenous natural energy resources.  
05 Energy, in all of its forms, coal, oil, gas and now  
06 coal bed methane, is the bedrock upon which our  
07 economy and culture are built. Natural gas production  
08 in particular is critically important to productivity  
09 and balance of our state's farming industry.

10 In addition to serving as space heating  
11 fuel, natural gas of feedstock for the production of  
12 ammonia is the building block for nitrogen fertilizer.  
13 The availability and affordability of natural gas has  
14 a profound effect on the ability of farmers to compete  
15 with today's agricultural marks. Our nation relies on  
16 coal bed methane, nine percent of our total gas  
17 production. In Pennsylvania, the most recent  
18 estimates of coal bed methane reserves I've seen a  
19 total of 2.7 trillion cubic feet of gas. The  
20 production value of those reserves at today's market  
21 prices would equals about \$20 billion.

22 Pennsylvania common law has long  
23 recognized the access to our nation's rich mineral  
24 wealth should not be jeopardized by a conflict between  
25 two private parties over a piece of ground. It's just



01 too important, too essential for our common comfort  
02 and prosperity to set unnecessary roadblocks to its  
03 development.

04           The mandatory surface agreement  
05 provisions in House Bill 1735 have the potential to  
06 become just such a roadblock. As written in the Bill,  
07 would reject Pennsylvania common law and create  
08 serious constitutional issues for the owners of coal  
09 bed methane estate. The most basic effect of  
10 mandatory surface use agreement legislation would be a  
11 state-imposed impairment contract and the effective  
12 transfer of a critical element of the coal bed methane  
13 surface owner.

14           In effect, the Bill would force coal bed  
15 methane surface owners to pay the landowner for access  
16 that he already owns. I'd like to go back to what  
17 Mr. Ellis said earlier and suggest that House Bill  
18 132, which reflects an amendment that was adopted in  
19 the House last year by almost a unanimous vote is  
20 something that is a much better alternative from our  
21 point of view, in dealing with this very complex and  
22 very difficult issue.

23           I understand that it doesn't go as far as  
24 some would like, but we do believe that the common law  
25 it sets a very serious standard, one that has, in

01 fact, worked in the past and can continue to work in  
02 the future. Thank you very much.

03 CHAIR:

04 Thank you, gentleman. We'll turn to the  
05 gentlemen, Louis D'Amico.

06 MR. D'AMICO:

07 Good afternoon, Chairman George, Chairman  
08 Hutchinson, Committee members, ladies and gentleman.  
09 My name is Lou D'Amico, I'm Executive Director of the  
10 Independent Oil and Gas Association of Pennsylvania.  
11 IOGA is a non-profit trade association representing  
12 the interests of oil and gas producers in  
13 Pennsylvania. The organization counts its membership  
14 the three largest coal bed methane operators in  
15 Pennsylvania.

16 With me today is Len Paugh with Great  
17 Lakes Energy Partners, one of the largest natural gas  
18 producers in the Commonwealth, and a producer and  
19 operator of coal bed methane wells. I've asked Mr.  
20 Paugh to assist in answering questions about CBM  
21 operations as needed by the Committee.

22 First, I would like the comment on the  
23 previous testimony of the Pennsylvania Coal  
24 Association and Pennsylvania Oil and Gas Association.  
25 IOGA fully agrees with the testimony given by these

01 organizations and endorses their positions on House  
02 Bill 1735. I see no particular need to neither repeat  
03 the legal analysis of previous speakers nor give you a  
04 section by section critique of the Bill. We agree in  
05 full with what has already been presented.

06 My comments will deal with what I believe  
07 are the major areas of concern for surface owners and  
08 how these concerns are addressed currently. There is  
09 always controversy when ownership of a resource is  
10 severed from the surface ownership. Regardless of how  
11 well an operator treats the surface owner, how  
12 cooperative in location of facilities, or how generous  
13 the surface owner is treated on damages, that owner is  
14 rarely happy that he is not participating in the  
15 financial benefit of that resource.

16 I believe most of the outrage and  
17 complaints about the CBM development are either based  
18 on this dissatisfaction on the ownership issue and/or  
19 fear of the impact on their property. The ownership  
20 issue was discussed in prior testimonies. The Hoge  
21 case is settled law unless or until Supreme Court  
22 would revisit the issue. IOGA is an organization  
23 participated in the original case supporting the  
24 position that CBM was part of the oil and gas estate.  
25 We lost. Many of my members will strongly believe

01 that that was a wrong decision while others, such as  
02 myself, believe the Court got the decision right.  
03 Regardless of what our opinion, we must live with the  
04 law as established.

05           There's been an almost constant barrage  
06 of negative coverage on oil and gas development  
07 nationwide as a result of many groups promoting an  
08 agenda rather than promoting truth or fact. In an  
09 atmosphere where landowners hear no positive  
10 information, there's no doubt fear and hostility that  
11 develops. I hope that our testimony today will be  
12 helpful in alleviating some of the fears and concerns.

13

14           First of all, there is misinformation  
15 being spread that the DEP does not have authority to  
16 regulate drilling and development of CBM wells and  
17 that these wells are treated somehow differently than  
18 a conventional gas well. There's no truth to this.  
19 The Oil and Gas Act, 223 of 1984, applies to CBM wells  
20 in the very same manner that it applies to  
21 conventional gas wells. Whether CBM is explicitly  
22 mentioned in any DEP regulation, rest assured the DEP  
23 uses the same general authority to protect the  
24 environment and satisfy the public safety purposes of  
25 the Oil and Gas Act.

01           The ownership question answered by Hoge  
02           has absolutely no impact on whether or not coal bed  
03           methane is considered natural gas by DEP. I think  
04           that's part of where part of the confusion lays. Many  
05           of you have been led to believe that you will wake up  
06           some morning to find a bulldozer building a well  
07           location in your backyard with no prior notification.

08           Section 201(b) of the Oil and Gas Act requires that a  
09           copy of the plat, the well location, be sent to the  
10           surface owner as well as all surface owners or water  
11           purveyors whose water supplies are within 1,000 feet  
12           of the proposed well location.

13           The first step in to getting that  
14           required permit. The first step in beginning a well  
15           operation is surveying the location and preparation of  
16           the plat. The surveyor will notify the landowner or  
17           surface tenant of his intention to survey. He will  
18           view the site, as planned, to see if the surface is  
19           appropriate for drilling and make initial contact with  
20           the landowner. The selection of that well location is  
21           based on well spacing, terrain, accessibility and  
22           landowner concerns. The typical successful well will  
23           be productive for 15-plus years. The last thing an  
24           operator needs is bad relations with a surface owner  
25           for those 15-plus years. Reasonable accommodation is

01 not only an appropriate legal principal, but it's also  
02 the commonsense approach to lessening the strain of  
03 relations between operator and surface owner.

04           If either side of the negotiations fails  
05 in commonsense and reasonable accommodation, the  
06 courts are the appropriate solution. Landowners fear  
07 that large portions of their property will be rendered  
08 useless by CBM operations. In reality, a small amount  
09 of land is involved after the initial drilling and  
10 restoration are finished. The well site itself is  
11 quite small. The largest impacted area is that  
12 required by road access to the well, which varies from  
13 location to location by distance to public roads.

14           Existing farm roads are utilized where  
15 possible and permissible by the landowner, since this  
16 minimizes not only the impact on both landowner and  
17 surface owner, but also a lower cost option to the  
18 operator.

19           Site restoration is clearly covered by  
20 the Oil and Gas Act as well as Best Management  
21 Practices mandated by DEP. The sites must be restored  
22 within nine months or the operator is subject to fines  
23 for violation. Water supplies are protected under  
24 Section 208 of the Oil and Gas Act. If there is a  
25 diminution or pollution of a water supply by a CBM

01 well, there is a rebuttable presumption that it was  
02 caused by the well activity. The operator is required  
03 to repair or replace the supply if the DEP finds that  
04 this is the case.

05 Long-term problems with water supplies  
06 caused by drilling activity are rare. The best  
07 indication of the rarity of water problems, access  
08 problems, or any problems between the landowner and  
09 operator is in the area of high level of leasing of  
10 oil and gas in active drilling areas. If conventional  
11 gas --- if you have active drilling problem in the  
12 area you'll usually see somewhere between 98 percent  
13 of the landowners lease. The problems more frequent  
14 or widespread, a few landowners will be willing to  
15 lease their land for oil and gas development if their  
16 neighbors were experiencing problems and they were  
17 afraid of losing the water.

18 I will not say that there's never been a  
19 legitimate disagreement between landowner and  
20 operator. When an impasse occurs, the courts are the  
21 best solution to the problem. I am saying that in  
22 general from my experience, operators make every  
23 effort to minimize impacts and work fairly and  
24 reasonably with landowners.

25 I'm open to your questions of a general

01 nature and Mr. Paugh certainly can address the  
02 specific operational questions that you may have. And  
03 thank you for the opportunity to present testimony  
04 today.

05 CHAIR:

06 Thank you, gentlemen for testimony. I  
07 would ask the panel to ---. It's working now. If I  
08 may, I will recognize all the members. Mr. Stevenson.

09 MR. STEVENSON:

10 Just two quick questions. First to Mr.  
11 Ellis. I'm curious --- what was the issue in the  
12 court case? You referenced the United States Corp. v.  
13 Hoge in 1983. What brought that to the Court?

14 MR. ELLIS:

15 I really don't know the history. I think  
16 it was just to settle ownership of the gas, methane  
17 gas and coal is my understanding.

18 MR. STEVENSON:

19 Do you believe is not the same issue that  
20 we're discussing today?

21 MR. ELLIS:

22 Without a doubt.

23 MR. STEVENSON:

24 The Pennsylvania Supreme Court ruled at  
25 that time that in a way that this is a current law and



01 current way to approach it?

02 MR. ELLIS:

03 Yes. Whoever owns the coal owns the  
04 methane.

05 MR. STEVENSON:

06 Right. Thank you. And my second  
07 question to Mr. Mayer. I was interested in your  
08 testimony, your reference to House Bill --- proposed  
09 House Bill 1735, and I believe in your testimony you  
10 say that should that Bill be common law, if I  
11 understand what you're saying here, it would be  
12 unconstitutional in your review?

13 MR. MAYER:

14 Yes, sir. I think it would be very  
15 suspect in that regard, in my opinion, and I think it  
16 crosses that line.

17 MR. STEVENSON:

18 Then do you think it would be open to  
19 challenge, in your view it would be unconstitutional by  
20 the courts should the legislature pass the  
21 legislation?

22 MR. MAYER:

23 Yes, sir. I think it would be a  
24 challenged in all likelihood.

25 MR. STEVENSON:

01                   It would be --- you feel that it is  
02 unconstitutional?

03                   MR. MAYER:

04                   I'm sorry?

05                   MR. STEVENSON:

06                   You feel that it is unconstitutional, per  
07 se?

08                   MR. MAYER:

09                   That's my opinion. For example, all of  
10 the purchasing of all of these properties mineral  
11 owners, for example, is based upon contracts, and one  
12 of the ingredients for essential elements of that  
13 contract is the right to access the surface, and the  
14 right to access the surface is not with the cost  
15 associated with it necessarily, so that's the  
16 expectation of the mineral. So to the extent that it  
17 now becomes that contractor, or that right becomes  
18 impaired, you're impairing the contract for that  
19 expectation was originally made.

20                   In addition, the property right, as I  
21 explained somewhat initially was that the common law  
22 right is to enter the property and act reasonably.  
23 It's only if you act unreasonably outside the limits  
24 of the easement that you then commit or trespass,  
25 okay, otherwise you're perfectly permitted to use the

01 surface within your rights. What's happening here is  
02 that that right is now being completely changed, and  
03 in fact, taken away.

04 MR. STEVENSON:

05 When you say what's happening here, you  
06 mean in this proposal legislation?

07 MR. MAYER:

08 Yes, I think that's essentially the  
09 essence of the legislation.

10 MR. STEVENSON:

11 Thank you very much. And thank you,  
12 Chairman.

13 CHAIR:

14 Thank you, gentlemen. Mr. Stairs?

15 MR. STAIRS:

16 A couple questions. The first one is  
17 more of a legal question. We're all familiar with the  
18 U.S. Steel and Hoge, you know, in determining the coal  
19 and the gas. Maybe I can ask our lawyer to answer.  
20 It seems in discussion today and talking to other  
21 people, that most other states take just the opposite  
22 opinion. The coal and gas is separate. What's the  
23 legal expertise on that? Why is that different there?  
24 Can you give us 25 words or less a legal answer?

25 MR. MAYER:

01                   I can say that I can substitute my  
02 judgment through the Supreme Court. It is the stigma  
03 in the minority position in this country with respect  
04 to the ownership of the methane coal. The majority  
05 does not give the coal estate to the ownership of the  
06 methane, but nonetheless that's the state law.

07                   MR. STAIRS:

08                   Other states have taken up a different  
09 position? We all would like to think Pennsylvania is  
10 right, but sometimes they're not always right. Maybe.  
11 I don't know. We'll see.

12                   A question now on the coal, and we all  
13 know there's many seams of coal under the land, some  
14 shallow, some pretty deep. But the property owner  
15 sold it's coal rights, and in this case this happened  
16 50 or 100 years ago or maybe even longer, do they sell  
17 all the rights of all the different veins of coal  
18 under that ground per se or do they just sell, you  
19 know, Pittsburgh vein, creek work vein? In other  
20 words, does some of the coal that sold and then some  
21 not sold or is it all --- or is it all sold?

22                   MR. ELLIS:

23                   I don't know if I quite understand your  
24 question, but when we buy --- when we purchase the  
25 rights to the coal and need the property, the deed

01 generally says we're entitled to full extraction of  
02 whatever happens to be the source, including the coal  
03 bed methane. Whatever we bought, whatever we own  
04 We're entitled to full completion of that resource.

05 MR. STAIRS:

06 Maybe four of five seams of coal under  
07 the property, you're saying that when you purchase  
08 that you're buying all the coal in different seam.

09 MR. ELLIS:

10 That I don't know.

11 MR. STAIRS:

12 At least in Westmoreland County some of  
13 the other coal, they have more value today than then.  
14 Just on the deed says it's per vein.

15 MR. MAYER:

16 Perhaps I could just add, any subservice  
17 can be vertically segregated, so you can have some  
18 veins that are named or some depths that are  
19 unidentified in the deed or the grant, reservation,  
20 whichever instrument you're working, but it would be  
21 so specified. I think earlier in the last century  
22 most part when coal was reserved or granted it was  
23 simply coal so that --- my guess that the great  
24 majority of estates include all the coal. It may not  
25 be specifically what you're dealing with, and other

01 than that you're only speaking in terms of generality  
02 as to what it is that's been reserved.

03 MR. STAIRS:

04 And I'm not a geologist. I'm not asking  
05 you to answer here. Obviously, the methane --- the  
06 gas goes to the coal. Is it possible that sometimes  
07 the methane escapes coal seam or --- I don't know what  
08 it looked like on the ground, but is there any cases  
09 where somehow, some reason natural, or otherwise the  
10 methane gas would escape from the coal seam in  
11 underground, it's not captivated by the coal seam.  
12 Does that still belong to the owner of the coal?

13 MR. PAUL:

14 My name is Glen Paul. Thank you for  
15 having me here today. Basically, I'm trying to think  
16 if there's an earthquake or some underground  
17 occurrence it is possible, it is very unlikely,  
18 though. The reason gas primarily sticks to coal is  
19 because of the pressure. There's water underground  
20 and the water creates hydrostatic pressure, which  
21 keeps the gas inside the coal. There was something  
22 that released that pressure that gas goes to the path  
23 of least resistance. It can go into another seam, but  
24 it has to have significantly different pressure for  
25 the gas to want to go there in the first place. It

01 has to push its way into the path the water, so it is  
02 possible. I can't think of any possible reason right  
03 now.

04 MR. D'AMICO:

05 The specifics of that --- your question  
06 was would you be able to take another formation to the  
07 coal bed methane. The treatment for the coal bed  
08 methane would be the same as the treatment of gas  
09 that's a different form Pennsylvania law of capture  
10 state. So if the gas did escape into a formation  
11 above it the oil and gas operator or the owner of the  
12 oil gas estate would have access, could take that gas.

13 MR. STAIRS:

14 Just in closing. I'm a farmer from  
15 Westmoreland County. Fortunately I have mineral  
16 rights. I have neighbors and friends who don't and.  
17 You want to come up with something there to protect  
18 the mineral owners as well as the surface owners. I'm  
19 hoping that it would be maybe this legislation, and  
20 I'm sure the panelists have some different things to  
21 say later in the day. We can get many roles in the  
22 legislator and vacate some of them sometimes, so I  
23 guess that's where we are today.

24 CHAIR:

25 Gentleman, Mr. Miller?

01 MR. MILLER:

02 Thank you, Mr. Chairman, and thank you  
03 Representative Stairs, because you led into where I  
04 wanted to head. Mr. Ellis, in your testimony you  
05 referenced coal estate subject to separate assessment  
06 of real estate taxes, so let's assume that  
07 Representative Stairs has his farm, and my great  
08 grandfather owned the farm next to it, and I inherited  
09 it, same acreage. My grandfather sold off the mineral  
10 rights, he kept his, is he paying more in real estate  
11 taxes since he has the mineral rights than I pay  
12 because they were severed?

13 MR. MILLER:

14 That's if this would apply.

15 MR. ELLIS:

16 Yes, if you have --- if the landowner has  
17 the mineral rights he will pay more in taxes because  
18 he's paying a tax on both the land and the mineral  
19 okay. You don't pay taxes?

20 UNIDENTIFIED SPEAKER:

21 No, sir.

22 MR. ELLIS:

23 If we own the coal right, the severance,  
24 the coal severance, and we own the right to the coal  
25 we are obligated to pay a tax into assessment realty



01 tax. That is a fact, and that's in the State of  
02 Pennsylvania.

03 MR. MILLER:

04 Mr. Chairman, I think that would be a  
05 fairly interesting question for this Committee to  
06 answer. That may have some implication on how we  
07 decide this down the road. I don't know. It just  
08 intrigued me that statement. It doesn't mean ---  
09 because it'd be terribly unfair if I was not paying  
10 that tax because I didn't have the mineral rights and  
11 we may have --- that we control of the mineral rights,  
12 and this person that's next door to me paying extra  
13 property tax because they didn't retain the mineral  
14 rights. I need a very strict question in fairness,  
15 and that could arise, so I don't know, but just what I  
16 thought of it then.

17 And as far as the question of whether  
18 Pennsylvania did right, just let me say this. In the  
19 drilling of the gas, coal bed methane, going with the  
20 coal rights, I would believe that in liability cases,  
21 and I was a surface owner and I sold my mineral rights  
22 to the coal, I wouldn't want to have the liability of  
23 the coal bed methane when somebody was wanting the  
24 coal. If I retain the rights to it, I think I would  
25 retain liability for any exposure or hazards that

01 would occur because of the coal bed methane. I think  
02 there's legal issues here.

03 And Mr. Chairman, I look forward to  
04 hearing the rest of the questions and learning more of  
05 the subject. Again, I'm from York County. You know,  
06 we don't have any coal, but I find it a very  
07 interesting subject, and I look forward to hearing  
08 more. Thank you, Mr. Chairman.

09 CHAIR:

10 Thank you, gentlemen. No other  
11 questions. Oh, Mr. Reed, I apologize. Gentleman, Mr.  
12 Reed.

13 MR. REED:

14 Just real quickly. On the Hoge case,  
15 U.S. Steelworkers v. Hoge, 1983, a couple of the  
16 panelists talked about whether it's a correct  
17 decision, incorrect decision, and I know that's been  
18 the topic of debate over the last four or five years.  
19 I've heard of this issue in Indiana County. Do any of  
20 you happen to know, has the case been challenged in  
21 Pennsylvania courts since then, anywhere in other  
22 courts the Decision on ownership, and if so, what are  
23 the outcomes? Just the information, I think we might  
24 be interested in finding out.

25 MR. MAYER:

01           To my knowledge, that case has not been  
02 challenged, and I don't know, unless the court itself  
03 --- the Pennsylvania Supreme Court itself determined  
04 that it was somehow an incorrect decision and some  
05 Appellant to another case that would come to the  
06 Court, they can conceivably change that decision, but  
07 there's no other, if you will, to make the changes  
08 except at that court for decision, except at that  
09 court.

10           MR. REED:

11           Okay. Thank you.

12           CHAIR:

13           Lady Bennington.

14           MS. BENNINGTON:

15           Thank you. I have three questions. The  
16 first one is to Attorney Mayer. I noted in your  
17 accommodation doctrine memo that relief is available  
18 to surface owners for applicable relief, as defined by  
19 Gillespie, however, does the surface owner have the  
20 burden of proof to show that the mineral owners'  
21 action threatened the land; correct?

22           MR. MAYER:

23           Not that it threatened the land, okay.  
24 The burden of proof rests with the surface owner to  
25 establish that these mineral owners selection or

01 method or use, okay, is unreasonable.

02 MS. BENNINGTON:

03 The burden proof is on the surface owner?

04 MR. MAYER:

05 That's correct.

06 MS. BENNINGTON:

07 Do you know how many injunctions have  
08 been successfully granted in the past 10 to 20 years  
09 to these surface owners?

10 MR. MAYER:

11 I would have no way of knowing that. To  
12 my knowledge --- I see very little in my experience of  
13 looking at case law on that issue even coming up in  
14 terms of injunctions and what have you. But it's an  
15 available remedy.

16 MS. BENNINGTON:

17 Thank you. My other two questions are to  
18 the panel in general. Is there any notice requirement  
19 now to the mineral owner that the coal owner intends  
20 to drill a well that could potentially impact the  
21 mineral owner's right?

22 MR. RHOADS:

23 To the mineral owner?

24 MS. BENNINGTON:

25 Right. Is there any notice of a

01 requirement to the mineral owner that the coal owner  
02 intends to drill?

03 MR. RHOADS:

04 No, there's no notice between mineral and  
05 coal owners, but there is a requirement whenever you  
06 drill a well that you do notify the surface owner of  
07 your proposal. And it takes the form of notice on the  
08 permit application, but as all of us have noted  
09 earlier in the testimony, it's very typical, very  
10 common for most producers because of the need to try  
11 to and the need to work out a reasonable accommodation  
12 of the surface owner.

13 It's very common for the mineral owner to  
14 approach the surface owner before submitting a permit  
15 application to discuss the various land uses that  
16 would be associated with mineral extraction activity.  
17 That is very common. And again, that all goes back to  
18 the common law doctrine accommodation, there's a need  
19 to reasonably accommodate one another. We're both  
20 owners of the land.

21 MS. BENNINGTON:

22 My last question is, what are the current  
23 policies and procedures in place to ensure that the  
24 water used is contaminated in the process of  
25 extracting coal bed methane. Would not resolve in

01 drinking water contamination, especially in rural  
02 areas.

03 MR. RHOADS:

04 Let's go back to the issue of ---.

05 MR. PAUL:

06 In regards to notification on your prior  
07 question, before you can apply formally for a permit  
08 for drilling with DEP, you must give notification to  
09 the landowner, the coal owner and anybody that has a  
10 water source within 1,000 feet of that water. You  
11 have to give them notification. You have to give them  
12 at least 15 days prior to notice before you can even  
13 apply for the permit. In addition to that notice,  
14 which is surface --- you're going to get certified  
15 now. You'll also, at least we do, include a landowner  
16 objection letter, which is primarily all you would  
17 need to do is put a name and address and whether  
18 they're objecting, that goes directly to DEP, not to  
19 us. So they get a minimum ---. Well, they have to no  
20 matter what. Everybody wants to do that prior to  
21 their filing for a permit.

22 In our case we will, at least four times,  
23 if not 10 or 11 times. We would, with the landowner,  
24 at least have some communication via phone or by mail  
25 before we ever commence operation on that litigation.

01 Now, regarding of how we protect the water, what we do  
02 is we have one of our engineers --- let me back up.  
03 As part of a notification to all --- the water within  
04 1,000 feet. We ask them what source of water you  
05 have, is it a spring? Is it a well? Is it a stream?  
06 If it's a well, how deep is it? Can you tell us where  
07 it's located so we know where, geographically, at 700  
08 feet northwest direction and it's 85 feet deep. We  
09 ask for that, because what we do is we will --- in our  
10 casing design, casing is the steel that goes into the  
11 well where it isolate the zones. What we'll do is  
12 we'll say, well, this gentleman, his well is 700 feet  
13 away, his well is 85 feet deep. This one over here  
14 which is 300 feet away, but it's only 45 feet deep,  
15 what we'll do is say, okay, the deepest one is this  
16 guy over here at 85 foot deep, we'll go 50 feet below  
17 that, we'll run steel casing through there and we will  
18 cement that in place. That's all typically done  
19 within about eight or nine hours.

20           And the methods we use for drilling gas  
21 well from the exact same is drilling a water well. We  
22 use the same equipment. It's the same distance, the  
23 same area. We basically we have a bit that you turn  
24 and you pump air down the middle of the pipe, and it  
25 brings the cuttings back to surface. When the well is

01 there, and that's typically how water wellers do it.  
02 We're simply drilling a water well in a different  
03 fashion 'til we get to that point, and then we'll seal  
04 that off with steel casing.

05 MS. BENNINGTON:

06 So the contaminated water that comes out  
07 of this process, is that sealed off in one of these  
08 wells?

09 MR. PAUL:

10 I don't understand the contaminated.

11 MS. BENNINGTON:

12 It's my understanding ---.

13 MR. PAUL:

14 Production water.

15 MS. BENNINGTON:

16 Right. The production water that's with  
17 the hydraulic acid used to abstract the methane.

18 MR. PAUL:

19 In some cases small amounts of acid are  
20 typically used. Typically never more than 250  
21 gallons. And what that does is --- the purpose of the  
22 acid is there's cement, and acid eats the cement, we  
23 punch holes into the steel casing, and we still got to  
24 get through the cement. The acid is put to get the  
25 cement out so we can go from the steel to that



01 formation. And as far as the production, that has to  
02 go through a Pennsylvania certified disposable  
03 facility.

04 MR. RHOADS:

05 The procedures that Mr. Paul was  
06 outlining are procedures that are in the Oil and Gas  
07 Act and in the regulations in Chapter 78, which are  
08 construction of the well. Casing requirements and  
09 cementing requirements are specifically outlined in  
10 the law, in the regulations, and they're specifically  
11 designed to administrate the earth as quickly as  
12 possible and to seal off fresh surface water, many  
13 potential contamination from further activity down  
14 hole, such as the preparation activities that he was  
15 talking about with the acid and so forth. When you  
16 bring that stuff back up to the surface for later  
17 treatment and/or disposal. You're designing and  
18 building that well, so that there's very, very limited  
19 possibility of any contact with those in the formation  
20 orders of treatment materials with the surface waters.

21

22 And again, this goes back to the whole  
23 issue of rebuttal presumption. If, in fact, something  
24 does happen in the course of drilling a well and the  
25 landowner notices his water is contaminated, or his

01 supply diminishes in some way, it's not on him to  
02 demonstrate --- it's not on the landowners to prove  
03 that the drilling causes the problems. It's on the  
04 driller to prove that he did not cause the problem,  
05 and he cannot --- rebuttal presumption, he has a  
06 liability and responsibility under law, under the  
07 current Oil and Gas Act to replace that water supply.

08 MS. BENNINGTON:

09 Thank you.

10 CHAIR:

11 Thank you lady, gentleman. Mr. Yewcic?

12 MR. YEWICIC:

13 Thank you, Mr. Chairman. After listening  
14 to all the testimony, and of course legal Counsel, I  
15 appreciate your testimony. I know what you're saying,  
16 but it sounded to me like I had the mineral rights  
17 under certain constitutional rights to my own surface.  
18 I have to give those rights up to you to make money,  
19 and that's pretty much what I'm hearing from ---. And  
20 my first question --- Mr. Ellis, it's just a general  
21 basic question. Generations ago when people sold  
22 their mineral rights for money purposes, what happened  
23 to the gas, did they just spend it?

24 MR. ELLIS:

25 Yes, for safety purposes.

01 MR. YEWICIC:

02 It's toxic gas? Mr. Rhoads, your oil and  
03 gas, in today's world, what is the value of methane  
04 compared to natural gas? What's its sold for on the  
05 market?

06 MR. RHOADS:

07 They're essentially the same product,  
08 natural gas. Coal bed methane is a form of natural  
09 gas..

10 MR. YEWICIC:

11 But you can't pump methane into a house,  
12 it has to be mixed gas --- natural gas can be pumped  
13 directly into a house.

14 MR. RHOADS:

15 No.

16 MR. YEWICIC:

17 You can't?

18 MR. RHOADS:

19 You can't.

20 MR. YEWICIC:

21 Generations ago, all the presidents in  
22 those days, we were going essentially with selling  
23 mineral rights to save the family farm, to extract  
24 coal for money, and the gas went down. In today's  
25 world methane, which is always a toxic gas in today's

01 world, it has the same value as natural gas. It is  
02 now pumped into the gas line to make money.  
03 Therefore, you know, it's a reasonable assumption to  
04 make that the old English law those things back then  
05 don't apply to today's world in this instance, because  
06 the Court said that they over reported the gas. Why  
07 doesn't the surface owner have a right to his  
08 property? Why should he allow --- not all gas ---  
09 there's good and there's bad? Why does it allow  
10 certain gas drillers to show up and look in their face  
11 and say, I have a right to come on your property? And  
12 they laugh, but why are these people controversy,  
13 because it's not working the way you presented.

14 MR. RHOADS:

15 This is something that's very disturbing  
16 to all of us here and there are --- you cannot control  
17 everyone all the time. You know, people are people,  
18 and they have their different ways of handling  
19 themselves with others, and there's nothing --- it's  
20 just common human nature. By enlarge, that's why  
21 common law evolved over the years to protect one party  
22 from the irresponsibility of another. We can't ---  
23 all we can talk to here is what they propose to us in  
24 this Bill. The issue is here.

25 I think that by and large the main reason

01 this has become such a controversial issue is the  
02 issue we're talking about. That's the Hoge decision.  
03 There are many surface owners who feel that it's  
04 unjust and unfair, a valuable asset and to turn it  
05 over to another person, and now that person wants to  
06 come on and take that asset. It's disturbing. We can  
07 appreciate that, but the reality of the law is that  
08 what the Supreme Court says it is, and we can't really  
09 over turn that.

10 MR. YEWICIC:

11 The Supreme Court says you own the coal,  
12 you own methane, you have a right to property. 1735  
13 recognizes that ownership. What I don't understand is  
14 that you're opposition position to create a surface  
15 use agreement that tries to protect and gives the  
16 rights to the surface owner for this protection,  
17 because the value of property goes down. It's water  
18 rights. I mean, --- well, it wasn't really clearly  
19 described, when you fracture the coal seam and, you  
20 start pumping water in these areas, I don't think  
21 anyone studied the long-term affects of the  
22 groundwater supply, or those sort of things. Those  
23 things aren't considered in today's world, because not  
24 everybody --- we have a right to be here. The surface  
25 owner, of course --- his hands are tied. He has no

01 protection. All we're trying to do for the surface  
02 owner, agree to protection, equal protection, to have  
03 a surface right agreement to protect his property  
04 under the constitution. Any comment?

05 MR. ELLIS:

06 In doing so, you shift the leverage back  
07 onto the surface owner, because he has, then, the  
08 ultimate power to block our permits. That's the key.  
09 If you read a court Decision, what we're saying is  
10 essentially both the mineral estate and the surface  
11 estate are to be treated substantially equally.

12 MR. YEWICIC:

13 But ---.

14 MR. ELLIS:

15 Let me finish. They also said that both  
16 should be allowed to enjoy the benefits of those  
17 estates. Now, from the perspective of the mineral  
18 estate, he should be able to access the land of the  
19 mineral. If during that time he appears the use ---  
20 or the interest of the surface estate then he is  
21 liable. And that's basically what the situation is  
22 today, and that's --- my understanding is the surface  
23 owners remedy today is, if during the course of our  
24 activity, the services appear unreasonably or  
25 unnecessarily, then we're liable, so ---.

01 MR. YEWICIC:

02 I understand what you're saying. That  
03 doesn't problem because it seems that you prepare your  
04 own decision we have a right to be here, you can't  
05 stop us? I understand what you're saying, but that's  
06 not what's coming to my office.

07 MR. RHOADS:

08 Let me try to respond. We, in fact ---  
09 you know, the mineral owner has the right-of-way. He  
10 has the right-of-way.

11 MR. YEWICIC:

12 Does the owner have the right to say what  
13 the right-of-way is?

14 MR. RHOADS:

15 The common law, as I understand it, says  
16 if the surface owner --- that the mineral owner must  
17 accommodate the interest of the surface owner. He  
18 must do so as far as necessary, so long that you do  
19 not impair, unreasonably, the mineral owners access to  
20 the surface --- I'm sorry, to access the surface to  
21 get the minerals. It's a balancing act. There's a  
22 common set of interests between the surface owner and  
23 the mineral owner, and the way the law has always  
24 worked is you have common law, you try to reach an  
25 accommodation. If you don't reach an accommodation

01 --- under our common law, if you don't reach an  
02 accommodation, the mineral owner still has the right  
03 to go on the surface and act as what is reasonable and  
04 necessary, no more. If he acts unreasonably or  
05 unnecessarily in the eye of the surface owner. The  
06 surface owner has the right to take that company to  
07 court. That's our common law. There is a right to  
08 have an accommodation in our common law for both  
09 sides.

10 MR. YEWICIC:

11 Two last questions. When was the first  
12 --- when did the problem first arise in southwest  
13 Pennsylvania?

14 MR. ELLIS:

15 I've been here for awhile. The first  
16 time we had a decision brought like this was in  
17 Indiana.

18 MR. YEWICIC:

19 About four or five years ago?

20 MR. ELLIS:

21 Yeah, I would say about four or five  
22 years ago.

23 MR. YEWICIC:

24 It was an issue before?

25 MR. ELLIS:



01                   I'm not aware of it. It was brought to  
02 my attention by the legislative board.

03                   MR. YEWICIC:

04                   Is that the same time the value of  
05 methane increased the value of natural gas?

06                   MR. ELLIS:

07                   I wouldn't say it was the value, I would  
08 say it was the increase in activity.

09                   MR. YEWICIC:

10                   One last question for you. Is there any  
11 --- this is a yes or no question. Is there any study  
12 on the long-term impact on fracturing for methane?

13                   MR. PAUL:

14                   Not that I'm aware of.

15                   MR. YEWICIC:

16                   Your company utilize a hydrologist to  
17 study what's going on underground?

18                   MR. PAUL:

19                   Yes. Typically in Pennsylvania, your  
20 coal seams are in excess of 800 or 900 foot --- 1,300,  
21 1,400 feet. And also, most likely your coal bed  
22 methane is below the Pittsburgh coal seam, which would  
23 have been rained out in most places. Groundwater, the  
24 water that's at 15 to 50 feet are not impacted. I  
25 can't physically think of a mechanism.

01 MR. YEWICIC:

02 But you're saying it's not impacted?

03 MR. PAUL:

04 No, I'm saying there's been no studies.

05 MR. YEWICIC:

06 You think there's no studies being done?

07 MR. PAUL:

08 Right. But the water, 50 feet or less,  
09 it might be a hundred feet for water wells. The coal  
10 seams are over 1,000 feet deep. They're not  
11 communication otherwise, there'd be no gas. I have  
12 just one comment I'd like to make. Here in Cambria  
13 County. We have a pile-up project up in Clearfield  
14 County. We have 56 potential well sites in Clearfield  
15 Township. We have 56 well site agreements signed to  
16 go on their property. They know where we like to go  
17 and they have accommodated us, and we've a good  
18 working relationship with those people.

19 MR. RHOADS:

20 One comment about fraction wells.

21 MR. D'AMICO:

22 Well, let me --- just one last thing from  
23 what he's saying. If this Bill would pass the way  
24 it's designed right now, we would not have those 56  
25 agreements. I believe we would have people holding

01 out in what else we can get on the price of coal bed  
02 methane.

03 MR. RHOADS:

04 On the issue of hydraulic fraction, the  
05 question of study what impact of groundwater,  
06 Pennsylvania gas producers have been using hydraulic  
07 fraction at least for, probably 20, 30, 40 years,  
08 since the '50s. Largely there's been no problems in  
09 terms of the effect of the underground water,  
10 especially I would say since 1983 after the pass of  
11 the Oil and Gas Act where you had various explicit  
12 procedures built in that were designed to protect  
13 surface water from well activities, oil and gas  
14 activities, especially since they hadn't got very  
15 much. You'll find any evidence whatsoever in ---.  
16 I'm certain there's one or two cases out there, but  
17 generally, no, you're not going to find a problem.

18 MR. YEWICIC:

19 Thank you, Chairman. Thank you,  
20 gentlemen, you're concluded. I would just like to  
21 caution the panel, those who are coming on. They're  
22 running over --- I just have one question. Mr. Mayer,  
23 maybe you can give it to me. What does the property  
24 clause of the U.S. Constitution say?

25 MR. MAYER:

01                   The property will not be taken without  
02 just compensation.

03                   CHAIR:

04                   You want to remind us about ---?

05                   MR. MAYER:

06                   I did.

07                   CHAIR:

08                   I thank the panel, and we have received  
09 statements from Jack, which will be attached to the  
10 record and given to the individuals. Let's take five  
11 minutes and then we'll call the second panel.

12                   SHORT BREAK TAKEN

13                   MR. HUTCHINSON:

14                   We're ready to start with the second  
15 panel. As before we will ask the members of the panel  
16 to all make their presentations, and then when they're  
17 all completed we will open up the questions from the  
18 Committee. So with that, I will like to introduce Mr.  
19 Ray Sleppy, who's president in the Indiana Farm  
20 Bureau. Mr. Sleppy, if you are ready to go, take the  
21 mic and proceed.

22                   MR. SLEPPY:

23                   I would like to thank Representative  
24 George, the other members of The Environmental  
25 Resources and Energy Committee, and Representative

01 Yewcic for your attention to the issues surrounding  
02 coal bed methane development in Pennsylvania.

03           Pennsylvania is blessed with a valuable  
04 new resource, coal bed methane, which if carefully and  
05 fairly developed, will enhance the prosperity and  
06 livelihood of the citizens of this Commonwealth. But  
07 if the development of this resource is accompanied by  
08 the exploitation of the Commonwealth's landowners,  
09 Pennsylvania will simply be repeating the mistakes of  
10 the past, which resulted in the desecration and  
11 abandonment of our farm land, the erosion of our  
12 agricultural economic base, and a decline in our farm  
13 population.

14           The route that we are currently following  
15 in Pennsylvania, as it pertains to coal bed methane  
16 development constitutes a reversion to these past  
17 mistakes and will ultimately cause long-term damage to  
18 our economic future. It is essential that we find a  
19 way to support the development of coal bed methane  
20 while we protect the rights and livelihoods of our  
21 farmers and landowners.

22           Let me cite a few facts which are  
23 fundamental to the CBM issue. The Pennsylvania  
24 Supreme Court, in U.S. Steel v. Hoge, 1983, ruled that  
25 in Pennsylvania the natural gas found in coal belongs

01 to the coal owner. The courts of most other states  
02 and the United States Supreme Court in *Amoco v.*  
03 *Southern Ute*, 1999, have ruled the opposite. They  
04 have ruled that the natural gas in coal belongs to the  
05 gas owner.

06 In states where the consent of the  
07 landowner is required prior to entering upon private  
08 property, CBM development goes on unabated, and in  
09 most of these states, the rate of CBM development far  
10 surpasses that of Pennsylvania. The Pennsylvania  
11 Supreme Court in *Rochez Brothers v. Durika*, 1953,  
12 ruled the coal owners are prohibited from accessing  
13 coal by digging through the surface unless they  
14 receive contractual consent from the landowner.

15 The Pennsylvania Legislature incorporated  
16 contractual consent into the state code in 1980,  
17 through Title 25, Section 86.64. Coal bed methane  
18 developers are ignoring Pennsylvania's contractual  
19 consent law when they access their coal estates  
20 through the surface without first obtaining the  
21 consent of the landowner. Regulations and  
22 restrictions on access to property, such as those  
23 encoded into Pennsylvania's Oil and Gas Act and the  
24 Coal Mining Law, Title 25 section 86.64 do not  
25 constitute takings. These regulations and

01 restrictions are deemed necessary to serve the general  
02 good while still making it possible for drillers and  
03 miners to profitably engage in their business. The  
04 general good of Pennsylvania's citizens would be best  
05 served by extending contractual consent of the  
06 landowners to CBM development.

07 Farmers and landowners are being forced  
08 to shoulder the burden of Pennsylvania's CBM industry.  
09 As it is currently being practiced, CBM development in  
10 Pennsylvania requires landowners to forfeit their  
11 surface property without the benefit of negotiated  
12 compensation or right of refusal. These farmers who  
13 live and work where the underlying coal has been sold  
14 must relinquish their land to facilitate the  
15 installation of gas wells, pipelines and access roads.  
16 They must accept the destruction of their property and  
17 abide limitations on its future use. They must  
18 tolerate ongoing noise, inconvenience and intrusions.  
19 Farm productivity and property values are reduced as a  
20 consequence of CBM development.

21 It is incumbent upon the lawmakers of  
22 Pennsylvania to strike a balance which will allow CBM  
23 developers to thrive while the property and livelihood  
24 of our farmers and landowners is protected. As the  
25 landowners in southern Indiana County found out when

01 they were subject to excessive destruction and general  
02 disregard for their property rights, the facilities of  
03 the state were inadequate to the task of protecting  
04 the landowners' interests. The outcry of protest and  
05 outrage was met with inaction and excuses.

06           The DEP is not responsible for  
07 landowner/developer disputes, that is a job for  
08 legislators. Legislators said the issue must be  
09 resolved in the courts. Legal advisers, such as Dr.  
10 Cyril Fox, mineral law expert at the University of  
11 Pittsburgh said, it is a legislative rather than a  
12 judicial question. I think by now nearly everyone  
13 agrees with Dr. Fox, we need legislative action.  
14 Legislation is needed because some CBM developers will  
15 take advantage of the lack of restrictions and  
16 regulations and destroy the goodwill of the CBM  
17 industry while wreaking havoc on the landowners.

18           In other words, as we have learned in  
19 Indiana County, if certain bad actors among the CBM  
20 developers can get away with it, destroying private  
21 property without paying fair compensation, they will.  
22 Not all CBM developers in Pennsylvania are bad actors.  
23 In his testimony before the Senate Environmental  
24 Resources and Energy Committee, chaired by Senator  
25 Mary Jo White, on May 22nd, '07, Mr. Gary Slagel of



01 CNX Corporation, a coal bed methane developer in  
02 Cambria County stated, if landowners don't want us on  
03 their property, we'll go somewhere else. Mr. Slagel's  
04 reasonable position concurs with the landowners  
05 consent policy sought by the Pennsylvania Farm Bureau  
06 and many of the landowners of PA. With both the  
07 industry and the landowners agreeing that consent is a  
08 workable solution to this problem, it is time to adopt  
09 landowner contractual consent as the law of  
10 Pennsylvania. Wording for proposed legislation for  
11 contractual consent is attached to the written  
12 testimony that I have submitted. Please examine and  
13 consider this solution to the problem as you debate  
14 this serious issue.

15 Now, further focusing on the proposed  
16 legislation at hand. Representative Yewcic's House  
17 Bill Number 1735 is a noble effort aimed at addressing  
18 and correcting many of the problems associated with  
19 CBM development. Though, I prefer contractual consent  
20 over other proposals as a remedy to landowners'  
21 problems, if HB 1735 is advanced, I would like to  
22 recommend a couple of changes.

23 A fundamental change is needed to the  
24 proposed definitions of coal bed methane and coal bed  
25 methane wells. The definitions currently read, coal

01 bed methane, gas which can be produced from a coal  
02 seam, a mined-out area or a gob well. Coal bed  
03 methane well, a hole or well which is sunk, drilled,  
04 bored or dug into the earth for the production of coal  
05 bed methane from a coal seam, a mined-out area or a  
06 gob well for consumption or sale.

07           On the issue of ownership of coal bed  
08 methane, Hoge is the defining legal instrument in  
09 Pennsylvania law. Hoge reads, such gas as is present  
10 in coal must necessarily belong to the owner of coal,  
11 so long as it remains within his property and subject  
12 to his exclusive dominion and control. This  
13 independent clause clearly grants the ownership of gas  
14 found within coal to the coal owner. The same  
15 sentence continues, landowner; however, is entitled to  
16 property surrounding coal, and owns such of the coal  
17 bed gas as migrates into surrounding property.

18           It is clear from the Court's ruling that  
19 only gas which is found within coal, in situ, belongs  
20 to the coal owner and gas found elsewhere, regardless  
21 of its origin, belongs to the gas owner and not the  
22 coal owner. Hoge unambiguously confirms that gas from  
23 mined-out areas and GOB gas, which accumulate in  
24 surrounding property do not belong to the coal owner,  
25 but instead belong to the gas owner. The wording of

01 HB 1735 as it now stands would seem to clump gob gas  
02 and gas from mined-out areas with coal bed methane  
03 when, in fact, Pennsylvania already has laws which  
04 regulate that natural gas which is found outside of  
05 the coal.

06 In keeping with the language of Hoge, it  
07 is recommended that the definitions of this Act be  
08 amended to read, coal bed methane, such gas as is  
09 present in coal. Coal bed methane well, a hole or  
10 well, which is sunk, drilled, bored or dug into the  
11 earth for the production of coal bed methane from a  
12 coal seam for consumption or sale. Another problem  
13 particular to the proposed legislation is the lack of  
14 a landowner negotiating position. I am skeptical that  
15 a developer will feel a necessity to negotiate or act  
16 in a reasonable manner toward a landowner unless the  
17 landowner has some influential control over the  
18 outcome of the negotiations.

19 In the proposed legislation Section  
20 3302(a)(3) states, if the surface owner and operator  
21 are unable to execute a surface use agreement within  
22 45 days of the notice. I propose that this sentence  
23 be amended to read, if the surface owner and operator  
24 are unable to execute a surface use agreement within  
25 180 days of the notice. The additional few weeks will

01 give the landowner more time to weigh options and to  
02 pool his or her financial resources. Most farmers and  
03 landowners are not well versed on their legal status  
04 relative to CBM development and will require time to  
05 study their position and formulate a proper response.

06           Since developers are generally well off  
07 financially and landowners are not, landowners will  
08 need time to determine if a legal battle is necessary  
09 or feasible. This lengthening of the contemplation  
10 time will serve a level playing field. In conclusion,  
11 I feel it is in the best interest of Pennsylvania's  
12 landowners and CBM developers to establish contractual  
13 consent as the law of the Commonwealth. Short of  
14 that, I recommend that the proposed changes to House  
15 Bill Number 1735 as stated above be adopted. Thank  
16 you.

17           MR. HUTCHINSON:

18           Mr. James Kleissler, he's the Executive  
19 Director of Center for Coalfield Justice. Thank you.

20           MR. KLEISSLER:

21           Thank you for this opportunity to be here  
22 today. This testimony is provided on behalf of the  
23 Center for Coalfield Justice. We've been working over  
24 the last nine months or so, largely with communities,  
25 citizens throughout western Pennsylvania, trying to

01 help the citizens become educated about what their  
02 existing rights are about coal methane, but also  
03 allowing an opportunity for the citizens being  
04 affected working together to change the existing laws  
05 and regs.

06           We believe it's time to restore  
07 commonsense and decency in the property law of  
08 Pennsylvania. And I will say this morning, I heard a  
09 lot of testimony of the various court cases that were  
10 in effect over the years. Pennsylvania, I think, is  
11 rather indicative that outside of occasional reference  
12 in the Pennsylvania Oil and Gas Act, there's very  
13 little reference to statutory guidance. I think that's  
14 very significant. That does make it very clear to the  
15 Pennsylvania legislature that support the legislature  
16 and act on this issue, and I just wanted to reinforce  
17 that point.

18           I believe only the Pennsylvania  
19 legislature has the authority to move, so that the  
20 people in the Commonwealth do not continue to be  
21 subjected to indecent exploitation of their  
22 homesteads, residences, farms and their water sources  
23 by special interests in coal and gas industries.

24           We believe that it is imperative that the  
25 legislature enact surface owner rights legislation.

01 In this regard, we believe that the current  
02 legislation falls a bit short of ensuring  
03 Pennsylvanians of a basic right to shelter and free  
04 and fair commerce opportunities. Furthermore, we have  
05 recommendations for what types of inclusions are  
06 important to restoring these rights.

07           Currently, coal bed methane drilling is  
08 largely invisible within the statutory and regulatory  
09 structure. It is true that the Oil and Gas Act  
10 applies regulatory laws to oil and gas permit for coal  
11 bed methane. It's also true, for example, that the  
12 Oil and Gas Act does not provide notice to the gas  
13 owner in the instance that coal bed methane wells  
14 being drilled, and you can see that by looking at the  
15 law itself. And you can also see that by looking at  
16 the applications for oil and gas permits.

17           It is our experience that the Oil and Gas  
18 Act permit structure completely fails to address the  
19 concerns of the landowner, but instead subjects oil  
20 and gas drilling activity into what has become a  
21 rubber stamp permitting process for drillers. Now,  
22 This includes the waivers within the law. I've looked  
23 at probably a couple thousand gas permits in just  
24 about every --- I want to say about every high  
25 percentage of when you look at oil and gas numbers, a

01 large number of waivers for alternative disposal.

02           So that's a big issue. It's basically a  
03 rubber stamp process, it's a very fast process,  
04 extremely rapid process. In fact, you often see that  
05 with oil and gas well, they will give you a permit  
06 just to get that out of the way. It's such a quick  
07 and easy process, that to do that, to apply for  
08 permits, it never actually ---.

09           So take a look at the legislation HB  
10 1725, we feel that it takes the Band-aid approach. We  
11 feel that a comprehensive approach has changed --- is  
12 required. I think the most pragmatic way to do that  
13 is amend the Oil and Gas Act to make it really  
14 affiliated, that the surface owner have rights to  
15 protect their surface property.

16           If the surface owner were to go in and to  
17 somehow impact the mineral owner's property, have an  
18 ability to do that. The associations who testified  
19 earlier were screaming for change, but it's not really  
20 practical for the landowner to do that, so  
21 unfortunately they're not begging for change to put on  
22 our shoulders. And we think the bedrock of the  
23 culture in Pennsylvania is the people of Pennsylvania,  
24 not the coal industry or the oil and gas industry.  
25 And we think that's an important thing that's

01 incurring treatment of this legislative in  
02 Pennsylvania. It's the people of Pennsylvania who get  
03 the brunt of the negative impacts, and that's a real  
04 problem.

05           One of the really important things is to  
06 require that the written documentation for permitting  
07 of all wells is a significant problem. If you've ever  
08 seen an actual department decision on an objection  
09 filed by a resident of Pennsylvania, you would know  
10 that they don't provide rationale for the objection,  
11 and that's a huge problem with the Department now, so  
12 the landowner has the state rule against him on a  
13 issue, the landowner doesn't actually know  
14 specifically what the rationale for that decision was.

15           It is important to require that operators  
16 obtain an agreement, or otherwise obtain permission  
17 from the landowner. In my testimony here I talk about  
18 independent board, but what I'm trying to get at here  
19 is that currently the legislation, 1735 talks about it  
20 setting aside, basically a bomb and then allowing to  
21 proceed based on that. And I see that it's a problem  
22 because to set aside a bomb is not prohibited, that  
23 simply allows the oil and gas operators coal bed  
24 methane, just look the other way if they so desire on  
25 public lands in Pennsylvania. The agencies have tried



01 to enforce a grievance and have had mixed success.  
02 And operators --- in fact, Pennsylvania went ahead to  
03 pick up permission of that land, as you see ---.

04 Protection for structures and water  
05 supply needs to be mandatory. The issuance of waivers  
06 is going to be sort of a rubber stamp process. They  
07 can't continue to do so. And there's no reason to  
08 move wells within, you know, 500 feet of somebody's  
09 residential structure. With the technology we have  
10 today --- and we think that should change.

11 Conversation with the landowners should  
12 be thorough, not just occasional liability claim. It  
13 needs to protect the landowner, because the water  
14 supplies, and for future generations, because that  
15 land is going to pass through their family, and it  
16 indicates Pennsylvania is accessible gas companies  
17 beyond damage to their surface estates.

18 I've heard a lot of testimony this  
19 morning about the oil companies, they're executing  
20 these coal bed methane levels issue, work out  
21 agreements with the landowners. That's not what we're  
22 here for. I would disagree with that characterization  
23 of what is actually happening. In support of that  
24 statute being enacted, this could be included in 1725,  
25 and also legislation landowners in Pennsylvania ought

01 to have a right to obtain the coal mines their desire  
02 to manage their farm, residence without coal bed  
03 methane in the future.

04 I think that's reasonable, and I think  
05 whatever process landowners have at their disposal to  
06 remedy issues that they're faced with. I think it's  
07 very imperative, very important to not be prohibited.  
08 It is much more prohibited on landowners to have to  
09 hire lawyers to go to Commonwealth Court than it is on  
10 a gas company to retain attorneys, whatever the  
11 process of the law is in question. I think whatever  
12 process replaces surface use agreement or contract  
13 consent agreement, some sort of an agreement that the  
14 landowner gets to take their time to read over. I  
15 think it would be a good solution to this. It's a  
16 good example with the oil gas issues in support ---  
17 and could be indicative of this. So that it.

18 MR. HUTCHINSON:

19 Next we will hear from Beverly Braverman,  
20 Executive Director of the Mountain Watershed  
21 Association. Beverly, you may now proceed with your  
22 testimony.

23 MS. BRAVERMAN:

24 Thank you. Can everyone hear me? I  
25 usually don't do this. The Mountain Watershed

01 Association is a grassroots, community-based group  
02 located in Southwestern Pennsylvania in the Indian  
03 Creek Watershed, which is around where Seven Springs  
04 Ski Resort is. Basically, I have to say that the Hoge  
05 case only provides the industry with reasonable  
06 access, and according to most of us, express  
07 permission to access would be reasonable.

08           Having said that I would like to go  
09 through my testimony, and it's going to vary  
10 significantly from what you have. There's a  
11 difference between natural gas wells and coal bed  
12 methane wells, and these differences significantly  
13 change how comfortably surface owners can co-exist  
14 with them. Natural gas wells do not use pump jacks,  
15 and that's four-stemmed pump that goes up and down and  
16 pumps throughout --- off and on throughout the day.  
17 Coal bed methane wells do.

18           The result of that is the surface owner  
19 could now have a living piece of industrial machinery  
20 operating within 200 feet of their home. And not only  
21 could they have one well like that operating within  
22 200 feet of their home, they could have several wells  
23 operating close to their home. We believe that the  
24 intrusion of this can deprive the surface owner with  
25 the peace and tranquility of his property for the

01 remainder of their lives. Some of these wells are  
02 still in action, and it's 20 years later.

03 Another problem is the potable  
04 groundwater is used in this process and is  
05 contaminated in this process. Actually, I just  
06 learned that each well produces 10,000 gallons of this  
07 water per day, so that's billions of gallons of  
08 precious clean groundwater being utilized in this  
09 process.

10 I live in a rural area, and one of the  
11 biggest problems that we have in that area is  
12 providing sufficient potable water. There are  
13 existing homes without water as a result of  
14 contamination already from the abandoned mine  
15 discharges. We're seeing decreases of water levels in  
16 our pristine streams from overuse. The solution in  
17 our area is to construct additional water lines, but  
18 that requires money, and rural areas do not often have  
19 sufficient money to do this.

20 The coal and oil and gas industry speak  
21 to the devaluation of their property if new laws are  
22 adopted to protect the surface owner. As we speak,  
23 the property of numerous Appalachians is being  
24 devalued by the presence of coal mines and coal bed  
25 methane wells. We did not come to the table over this

01 issue. We were invited to the table by the  
02 conservation districts. And the reason that the  
03 Mountain Watershed Associated and the Center For  
04 Coalfield Justice is now involved in this problem, is  
05 because conservation districts requested our help  
06 because land was being taken, they were getting  
07 numerous complaints over the activities of the coal  
08 bed methane industry.

09           Further, there is legal precedent for the  
10 adoption of statutes to control access to surface  
11 land. The Surface Mining Control and Reclamation Act  
12 was passed to provide a balance between the need for  
13 energy and the right of citizens to the peaceful  
14 enjoyment of their property. The burden of extraction  
15 was to be placed upon the shoulders of the industry  
16 benefiting from it. This law was passed in 1977, and  
17 it's provided that any company wanting to surface  
18 mine, restrict mine property had to have service  
19 agreement from the surface owner, had to have an  
20 agreement from the surface owner before they were  
21 allowed to access.

22           The supplemental C form, which was that  
23 agreement, was required before the mineral owner could  
24 enter upon the surface owner's land, and it ensured  
25 the industry right to the mineral, did not

01 unreasonably burden the surface owner. Has this  
02 requirement brought a halt to surface mining? It has  
03 not. It has merely created an equitable balance  
04 between mineral extraction and surface enjoyment, so  
05 there is a precedent for adopting statutory law that  
06 will take care of the problem of this current surface  
07 access.

08           The industry assertion that these  
09 contracts required between them and the surface owner  
10 will mean an end to coal bed methane extractions or  
11 that they will not be able make sufficient money from  
12 this process is as weak now as it was when they  
13 asserted the same argument, the same reasoning over  
14 strip mining. Many surface owners, I think  
15 particularly farmers, who would welcome these  
16 activities would do this if they're --- even if their  
17 right to bar them from entering on their properties  
18 without permission existed.

19           I'm going to talk about why the  
20 legislature needs to act. First of all, the  
21 legislature needs to adopt laws to protect the surface  
22 owner as they did after passage of the Surface Mine  
23 Control and Reclamation Act. There is currently no  
24 requirements in real estate law, that we're aware of,  
25 that will tell the future buyer that there's a

01 possibility that acres of one's property may need be  
02 disrupted by the process of coal bed methane  
03 extraction.

04           The Department of Environmental  
05 Protection, despite what the industry portrayed today,  
06 has freely admitted to all of us in a public forum  
07 that it does not have the staff to regulate and  
08 oversee this activity. Particularly given the  
09 increase in the number of permits and wells.

10           Even if they did have the staff, the  
11 Department of Environmental Protection, again --- and  
12 this is in public presentations, claims that it has no  
13 authority to regulate many of the aspects of this  
14 process. I will read you some. DEP claims it has no  
15 authority over ownership or lease issues. Quote, the  
16 Department does not get involved in ownership/lease  
17 issues. These are civil matters and should only be  
18 addressed between the concerned parties. DEP has no  
19 regulatory authority to require proof of ownership for  
20 any CBM or any other gas resource development. Those  
21 are private civil matters. No regulatory authority  
22 over the issues of road rights-of-way, pipelines  
23 rights-of-way and timber or crop damage. Compensation  
24 negotiation is a private matter between the landowner  
25 and the operator.

01           DEP states that they cannot drill or  
02 cannot allow a well to drill within 200 feet of an  
03 existing building or water well, and that's in the  
04 presentation, but unfortunately after we verify this,  
05 that is not the case. DEP states it has no authority  
06 to unilaterally require well locations to be moved if  
07 requested by the surface owner. They have no  
08 authority --- and this is really critical when we're  
09 looking at water. They have no authority to require  
10 replacement or compensation for water loss if it  
11 occurs later than six months after completion of  
12 drilling.

13           They say they have no authority to  
14 require replacement or compensation for water loss if  
15 it occurs beyond 1,000 feet of the gas well despite  
16 the increased use of horizontal drilling. Now, I was  
17 not able to verify this, and this may be a  
18 misstatement in terms of whether they had the  
19 authority to require. The point is that the law only  
20 places a presumption on the company if the water loss  
21 occurs within that 1,000 feet. Since they're doing a  
22 lot more horizontal drilling, and that means they go  
23 down so many feet and then they go horizontally to  
24 pick up more gas, they can be drilling under someone  
25 else's water well, and they could impact that water



01 and the surface owner, or the owner of that well  
02 wouldn't even know that.

03           There are other reasons for the  
04 legislature to act. No distance limitations between  
05 gas wells and property lines. They exclude access  
06 roads and pipelines in what they keep telling people  
07 is .5 acres footprint for these things. There are no  
08 requirements to install pipe below plow depth, which  
09 is terrible if you're a farmer and you want to  
10 continue plowing your fields. There's a discord among  
11 Pennsylvania laws, farmland preservation and coal bed  
12 methane extraction do not support the same goals.  
13 Under the current state of enforcement, a farmer could  
14 end up with six wells on a hundred-acre property.

15           We ask specifically to address House Bill  
16 1735, and I have done that in my comments. We support  
17 3302(a)(1)(iv)(A) requiring compensation, including  
18 length and time of loss and (B) considering the  
19 surface owner's preference of location of wells and  
20 roads. We feel that 3302(a)(3)(i) is problematic,  
21 because many surface owners, particularly in  
22 coalfields do not have the resources to hire an  
23 attorney to apply to the Court of Common Pleas for  
24 anything, let alone to fight this battle. We oppose  
25 giving the department a directive, and the specific

01 language in the Bill is that they shall allow the  
02 operator to commence, not that they may allow the  
03 operators to commence operation pursuant to an  
04 approved permit prior to resolution in the Court of  
05 Common Pleas. This allows the operator to begin  
06 operations without providing the surface owner  
07 exhaustion of administration --- excuse me,  
08 administrative or judicial remedies.

09           We feel that House Bill 1735 is a good  
10 beginning, but our concern is that it does not go far  
11 enough. First of all, it does not require a right of  
12 first refusal, which Jim Kleissler talked about.

13           I would say in conclusion, I've read the  
14 testimony from the Pennsylvania Coal Association and  
15 Oil and Gas Association. The rule and purpose of the  
16 law is to protect the constitutional rights of people  
17 in the democracy. It is to strike a balance among  
18 competing interests, not only the special interests,  
19 and to protect our citizens from unreasonable burdens,  
20 inequitable treatment and a deprivation of property  
21 without due process.

22           I would assert that while we appreciate  
23 the companies that are approaching landowners, surface  
24 owners and treating them with respect throughout this  
25 process and taking their --- what they would like to

01 see happen into consideration while we really do  
02 appreciate the companies that are doing that, if most  
03 of the companies were doing that, we wouldn't be  
04 sitting here. Given the ongoing slate of litigation  
05 among mineral owners and property owners and among  
06 mineral owners and citizens trying to protect the  
07 comments, it is apparent that mines disagree about  
08 what the impacts of the law should be. Appalachia and  
09 Appalachians continue to be treated as though all of  
10 their land belongs to the commons, that is property  
11 utilized for the good of everyone.

12           The commons, however, were maintained by  
13 all the support it got. It is my understanding that  
14 despite the fact that acres of surface property are  
15 being taken over and used by coal bed methane  
16 extractors because we need the energy. The taxes for  
17 these areas remain the responsibility of the surface  
18 owner. The present situation is a de facto taking of  
19 property for an agreement that was made over a hundred  
20 years ago to which the surface owner was not even a  
21 party.

22           We ask that the legislature take action.  
23 We ask that you adopt surface owner agreements. We  
24 ask that you adopt part of Representative Yewcic's  
25 Bill, and we ask, most of all, that you take an

01 enlightened approach to this problem. Thank you very  
02 much.

03 MR. HUTCHINSON:

04 Thank you, Ms. Braverman. We'll now hear  
05 from Barry Tuscano, a member of the Conemaugh Valley  
06 Conservancy. Barry.

07 MR. TUSCANO:

08 To the members of the House Environmental  
09 Resources Committee and Chairman George, I thank you  
10 for allowing me to testify today. I'm Barry Tuscano,  
11 a landowner in Fairfield Township, Westmoreland  
12 County. I'm a board member and vice president of the  
13 Conemaugh Valley Conservancy. My board has authorized  
14 me to speak on the importance of land conservation in  
15 Pennsylvania, but I do not speak for other  
16 conservancies in Pennsylvania.

17 I want to note that I have entered  
18 written --- in the written testimony, an addendum,  
19 which was a letter which I sent to the Senate  
20 Committee on this --- at their hearing in May. It has  
21 additional details of my personal situation. In the  
22 sometimes contentious debate over resource extraction,  
23 the most valuable resource is sometimes overlooked.  
24 That is the land as a whole. Undeveloped forest and  
25 fields provide our citizens with agricultural products

01 and timber. It filters and stores our water. It  
02 makes the sustained biodiversity that we are blessed  
03 with in Pennsylvania possible, and it makes the  
04 quality of life for our citizens better through  
05 recreation opportunities and improved health.

06 Preserving open space counters the basic problem of  
07 sprawl, which has created so much stress on our  
08 infrastructure.

09           Pennsylvania's conservancies have the  
10 monumental task of preserving select pieces of  
11 valuable open space, while at the same time trying to  
12 remediate the damage of past abuses of our lands. I  
13 have been personally involved in efforts to protect  
14 open space through my work with the conservancy and  
15 through the grant of a perpetual conservation easement  
16 on our 80-acre homestead in Western Pennsylvania ---  
17 or to Western Pennsylvania Conservancy. Like other  
18 landowners, who have taken this step, my wife and I  
19 recognize that undeveloped land has a greater value to  
20 us and posterity than could be described in monetary  
21 terms. We have given away the right to subdivide or  
22 commercially develop our land, or to drill gas wells  
23 and strip mine on our land forever.

24           On top of this substantial donation, we  
25 have provided the conservancy with the resources to

01 monitor this easement after we're gone. Our  
02 officially protected land stands as an example to our  
03 neighbors to resist encroachment and to maintain a  
04 larger area of open space, appreciated by all. On the  
05 other end of this transaction, those conservancies and  
06 land trusts that have easement programs, are accepting  
07 great responsibility and devoting huge amounts of  
08 resources to the administration of their agendas.  
09 They have a tough job dealing with scattered parcels  
10 and diverse owners. We owe them many thanks for  
11 providing an essential public service.

12           The intrusion of coal bed methane  
13 drillers into western Pennsylvania has created a new  
14 threat to those of us who are trying to protect open  
15 space. Fragmentation of open space creates imbalances  
16 that can neutralize the benefits of the integrated  
17 area. Many species of wildlife and plants cannot  
18 survive the disturbances wrought by well pads,  
19 pipelines and roads. Such disturbances are an  
20 invitation to invasive species, which is already a  
21 huge problem in western Pennsylvania. The drilling  
22 operation itself poses many stresses on the wildlife  
23 of the area, and the constant noise of a pump jack  
24 will certainly have an impact. The extraction of  
25 water from a CBM well is going to affect the water

01 table surrounding it and could alter springs and  
02 streams in the area. Add to this the regular  
03 intrusions into the habitat of the service vehicles,  
04 and you can see that an attractive wildlife habitat  
05 has been destroyed.

06           Apparently, under the present  
07 Pennsylvania laws and court decisions, a landowner who  
08 does not own the coal under his property, has no right  
09 to protect his land from this kind of destruction. I  
10 can only hope that the attention being paid to the  
11 issue will result in meaningful changes to the law.

12           HB 1735 falls short of protecting the  
13 taxpaying landowners of Pennsylvania. I urge you to  
14 consider all of the remedies proposed by the citizens  
15 speaking here today. I would like to further propose  
16 that a provision be enacted that would require DEP to  
17 confirm ownership of any severed estates before  
18 issuing drilling permits and determine if any of those  
19 tracts are protected open space. The owners of a  
20 protected parcel would then be given an opportunity to  
21 buy the severed estate or the right to the surface  
22 access, with the provision that it would be donated to  
23 the land trust involved. I believe that such a  
24 provision would also --- should also set a limit on  
25 the selling price relative to the purchase price and

01 the inflation rate in the intervening years to prevent  
02 a speculator from making unreasonable demands.

03           This proposal should be enacted to  
04 protect both private and public open spaces. Land  
05 protected by conservation easements, farmland  
06 preservation, game lands, state forests, state and  
07 county parks, all have a value to the public far  
08 exceeding the price that has been paid to exploit the  
09 mineral wealth underlying them. While this may limit  
10 the reach of the drillers in a small way, I would  
11 suggest that it would take far less of the owners of  
12 the mineral estate than they are claiming. They would  
13 be fairly reimbursed for their property. If valuable  
14 methane deposits are under the protected land, the  
15 agreement could still provide access via horizontal  
16 drilling from adjoining tracts. The integrity of  
17 those special places would be assured for the  
18 enjoyment of all posterity, and a large impediment to  
19 future protection efforts will be removed.

20           I urge you to take action quickly to  
21 resolve this crisis. You have a responsibility to the  
22 citizens of Pennsylvania who are living on the land,  
23 raising families here, paying taxes on it and  
24 protecting it for future generations that far exceeds  
25 the responsibility to out-of-state drilling companies,



01 who pay little or no taxes, and will leave any  
02 environmental and infrastructure problems that create  
03 for us to fix.

04 Many of the landowners I have talked to  
05 feel strongly that they have the right to protect  
06 their property from those who would destroy it. Under  
07 the present situation, they would be considered  
08 criminal for doing so. Only through strong and  
09 courageous action by our lawmakers can this situation  
10 be defused. I've heard excuses for inaction involving  
11 case law and threats of lawsuits from the coal  
12 operators if this comes down to a choice between right  
13 and wrong for the citizens of this state. The right  
14 choice is to give Pennsylvanians some tools to protect  
15 their homes and land. Thank you.

16 MR. HUTCHINSON:

17 Our final testifier is Robert Davis,  
18 Chairman of Cambria County Land Preservation Program.  
19 Mr. Davis.

20 MR. DAVIS:

21 Members of the committee, my name is Bob  
22 Davis. I'm a farmer from Cambria Township, Cambria  
23 County. I would like to comment on the ways that coal  
24 bed methane drilling affects landowners and lessees of  
25 farmland, as well as the impact of drilling on

01 preserved farms.

02           In my area of Cambria County, the mineral  
03 rights that coal bed methane drillers are using to  
04 acquire ownership of methane are often bought at tax  
05 sales, often for minimal cost. I would like to see  
06 legislation passed requiring the notification of  
07 surface owners prior to the sale of the mineral  
08 rights. I believe that the surface owner should have  
09 the right to purchase these mineral rights. The State  
10 of Indiana addressed this problem by passing the  
11 Dominant (sic) Mineral Interests Act in 1976. This  
12 Act provides that a severed mineral interest that is  
13 not used for a period of 20 years automatically  
14 reverts to the current surface owner.

15           As an owner and lessee of farmland, I  
16 believe that coal bed methane drillers would be  
17 required to obtain permission from surface owners, any  
18 other person who has an interest in that property,  
19 including another farmer leasing that property. This  
20 should include the right of refusal. When the mineral  
21 rights are severed, coal bed methane drilling was not  
22 considered in the sale of these mineral rights. Many  
23 of these sales did not include the surface rights. If  
24 a strip miner acquired these mineral rights at a tax  
25 sale, he would be required to obtain permission from

01 the landowner before accessing the property.

02 I believe that methane drillers should be  
03 held at the same standard. And along that line, the  
04 Cambria County Agricultural Land Preservation Program  
05 would like to see it in Act 54, the Bituminous  
06 Subsidence Act, Conservation Act, be amended to  
07 include coal bed methane as a way to get the permits  
08 to drill methane wells, just like the Oil and Gas Act.

09 As a member of the Cambria County  
10 Agricultural Land Preservation Program Board of  
11 Directors, I have concerns on the effect of methane  
12 drilling on preserved farms. Our board asked the  
13 Department of Agriculture to clarify this issue. They  
14 stated that drilling would be allowable on a preserved  
15 farm, but processing of the gas would not be  
16 permitted. If the gas was processed on the preserved  
17 farm, the deed of easement would be violated. My  
18 concern is that if the surface owner cannot refuse  
19 access to the drillers, how can he be penalized for  
20 the actions of the drillers? Also, the impact on the  
21 surface of all farmland should be minimal and  
22 restoration should be completed.

23 Many times this land is preserved to  
24 ensure that it will remain productive agricultural  
25 land. Steps need to be taken to protect the

01 investment the Commonwealth has made in these  
02 properties before they are impacted negatively.  
03 Pennsylvania leads the nation in farmland preservation  
04 and the commitment that landowners have made to this  
05 program should provide protection from encroachment  
06 from coal bed methane drillers. Furthermore, coal bed  
07 methane drillers should be required to prove ownership  
08 of mineral rights.

09           The Department of Environmental  
10 Protection should require this action and provide that  
11 information to the surface owners when a permit is  
12 applied for. This information should include a Title  
13 Report and any other documents concerning the  
14 property. Because these rights were severed many  
15 years ago and the different seams of coal can have  
16 different owners, it can be difficult to verify  
17 ownership. Therefore, DEP should require that  
18 drillers prove ownership of the coal seams they intend  
19 to drill through. This should be made available to  
20 the surface owner as well. When drilling is completed  
21 and the gas is being extracted, DEP should require and  
22 provide to the surface owner proof that the gas is  
23 coming from the coal seams and only the coal seams.

24           The ownership of coal bed methane in  
25 Pennsylvania was determined by the 1983 Hoge Decision.

01 Other states, including North and South Dakota,  
02 Illinois and Indiana have rejected the holdings in the  
03 Hoge case and have followed the U.S. Supreme Court  
04 ruling that decided that the owner of the gas rights  
05 is also the owner of the coal bed methane. Any  
06 company drilling for methane in these states must have  
07 an agreement with the surface owner and pay for  
08 damages to the land and crops. Pennsylvania drillers  
09 are not required to pay the surface owner for any  
10 damage that may occur, and many landowners have  
11 suffered many thousands of dollars of damages with  
12 little or no compensation.

13           With the value of farmland rising  
14 rapidly, the loss of the use of land that is used by  
15 methane drillers puts farmers at an economic  
16 disadvantage. The farmer loses the use of  
17 approximately one to two acres for every well. This  
18 includes the well site, access roads and pipelines.  
19 The property's value would be greatly reduced by the  
20 presence of methane wells. Who would pay top dollar  
21 for a property with methane wells that return no  
22 income but cause noise, erosion of roads and well  
23 sites?

24           Another landowner concern has to do with  
25 the groundwater. Because coal bed methane wells

01 remove up to 4,000 gallons of water daily per well,  
02 the depletion of water supplies can negatively affect  
03 farmers. Most farms use wells or springs to supply  
04 water for household usage and to water livestock.  
05 Farmers have concerns regarding the quality and  
06 quantity of water supply. The testing of water and  
07 the guarantee of water quality and quantity of water  
08 supplies should be required for the life of the well.  
09 This testing should be the responsibility of the  
10 drillers, not the landowner. This result of any test  
11 should be shared with DEP and the surface owners.

12           In conclusion, agriculture is  
13 Pennsylvania's leading industry, and steps must be  
14 taken to protect landowners from the encroachment of  
15 coal bed methane drilling operations. The economic  
16 damage of drilling operations on Pennsylvania farms is  
17 staggering. This would include the loss of valuable  
18 acreage to well sites, access roads and pipelines.  
19 Landowners must be compensated for these losses. The  
20 landowner must have the right to refusal and the right  
21 to restrict entry onto the property. Any property  
22 that's enrolled in the farmland preservation program  
23 should be given additional protection reflecting the  
24 landowner's commitment to agriculture. Before mineral  
25 rights are sold, the surface owner should be notified

01 and be given the first chance to purchase these  
02 rights. Also, the Dormant Mineral Rights Act should  
03 be considered.

04 Please take into close consideration the  
05 fact that when coal rights were severed many years  
06 ago, the drilling of coal bed methane was not intended  
07 by either the seller or the buyer of the mineral  
08 rights. It was a Pennsylvania Supreme Court ruling  
09 that created this problem for landowners and hopefully  
10 legislation can be passed to address these problems  
11 and find a fair solution for Pennsylvania's farmers.  
12 Thank you very much for your time and consideration.

13 CHAIR:

14 Thank you. Without objection, we'll  
15 start on the left this time. Mr. Yewcic?

16 MR. YEWICIC:

17 Thank you, Mr. Chairman. I'd like to  
18 thank the panel for their coming and sharing. The  
19 first panel said that 1735 was way too far an impact  
20 in the constitutional right of the property, this  
21 panel says 1735 doesn't go far enough. So we're  
22 getting close. A couple of brief questions. Number  
23 one, one of the issues that's raised from the previous  
24 panel was that people were paid fairly for the damages  
25 done to the property. Are there other people that the

01 trees are cut down and are compensated? Is it true  
02 that that's happening out there? Has anyone had  
03 experience of what happened to the industry on your  
04 property?

05 MR. TUSCANO:

06 We heard that, yes.

07 MR. YEWICIC:

08 No firsthand?

09 MR. TUSCANO:

10 They're not drilling on my property yet.

11 MS. BRAVERMAN:

12 We are also hearing that, sir, and that's  
13 one of the reasons that the Conservation district  
14 approached this, to try and do something to help with  
15 this problem.

16 MR. TUSCANO:

17 The point is that any negotiation, when  
18 you have no power or negotiation, it's a moot point.  
19 If you're required to negotiate, and you have all the  
20 power, what's the point?

21 MR. YEWICIC:

22 Well, the objection to 1735, the industry  
23 is more or less opposed to that, and I understand  
24 where they're coming from to protect their interests,  
25 my interest is the surface owner. The issue of



01 underground water. I asked the previous panel if any  
02 long-term study was been done on what occurs to the  
03 water table, water supply and how that affects the  
04 farm, you rely on streams and wells and so forth. Are  
05 any of you aware of any studies that have occurred?

06 Yes, no?

07 MS. BRAVERMAN:

08 There's a study that was done on  
09 horizontal drilling in West Virginia, and I'd be happy  
10 to provide that to you.

11 MR. YEWICIC:

12 If you can provide that, I'd appreciate  
13 that.

14 MS. BRAVERMAN:

15 Yes. Also, ---.

16 MR. YEWICIC:

17 Should that also be --- as far as due  
18 diligence on behalf of the industry, should that study  
19 be included before ---?

20 MS. BRAVERMAN:

21 I don't know the answer to that. I'm  
22 sorry.

23 MR. TUSCANO:

24 I cannot speak as a hydrologist. I've  
25 made my living as a roofer, and I do know that water

01 runs downhill. If they're pumping water out from  
02 underneath that water table that water is being  
03 replaced from somewhere above. All other arguments do  
04 not convince me that that's not true.

05 MS. BRAVERMAN:

06 Further, I believe Representative George  
07 said Ms. Hockenberry has submitted comments.

08 MR. YEWICIC:

09 Yes, she did.

10 MS. BRAVERMAN:

11 We have been in communication with her,  
12 and has she submitted some comments, they're pretty  
13 extensive, from what I gather, over the water impact,  
14 so you may find the answer in her comments. I don't  
15 know.

16 CHAIR:

17 I'm familiar with her, and I read her  
18 testimony.

19 MS. BRAVERMAN:

20 I will send that to you.

21 CHAIR:

22 Okay. Thank you.

23 MR. DAVIS:

24 I'd like to make a comment. The Land  
25 Preservation Board, Act 54, are a lot of these

01 hydrologic studies and stuff be placed in Act 54 for  
02 coal mining, which they require coal bed methane  
03 required them under Act 54. They would be required to  
04 do a lot of these studies, by just simply including  
05 them under Act 54.

06 MR. YEWICIC:

07 In other words, if I own a strip mine  
08 near your property, I'd have your permission; correct?

09 MR. DAVIS:

10 Yes.

11 MR. YEWICIC:

12 However, Hoge says if you own the coal  
13 you own the gas.

14 MR. DAVIS:

15 Yes.

16 MR. YEWICIC:

17 And one last comment. A lot of reference  
18 to first refusal. This committee has that Bill  
19 introduced, but there are some legal problems we're  
20 trying to come to, but it is being looked at. I don't  
21 --- what that problem is we got to get another ---.  
22 We feel we didn't have enough to do the right thing,  
23 so hopefully we can do that. Thank you, Mr. Chairman.

24 CHAIR:

25 Thank you, gentlemen. Mr. Reed, I

01 apologize.

02 MR. REED:

03 Thank you, Mr. Chairman. I just have a  
04 couple of questions. My first would be for Mr.  
05 Kleissler. In your testimony on the second page, you  
06 talk about the requirement or written document for the  
07 rationale permit. And when I read that, it appears to  
08 read a little bit different than when you explained  
09 it. It appeared as though, at least when you  
10 explained it, you were talking about it as if a  
11 person, a landowner filed an objection to a permit  
12 being issued, and that objection is not solidified by  
13 DEP. They're not given a reason for that objection,  
14 not being taken into account or acted upon. What  
15 you'd actually like the DEP to do, provide written  
16 documentation back to the objector as to why the  
17 objection will not go through; is that correct?

18 MR. KLEISSLER:

19 Well, I think in both instances, a  
20 written rationale of why a permit being issued in the  
21 instance that the landowner, in effect, can understand  
22 the rationale of that decision after the fact, or  
23 indicate an objection that the Department feels they  
24 had to issue the permit despite the objection.  
25 Obviously, there should be a written rationale. What

01 I've seen from objections in the past is just  
02 basically a statement that we've decided that it  
03 doesn't meet, you know, whatever ---.

04           There's no specific --- the guidance of  
05 the Gas Act is very vague. It doesn't give a very  
06 specific criteria, so we think it's okay. And that's  
07 obviously an adequate from just a right to know  
08 respect. If they're going to issue a permit we have a  
09 right to know the rationale behind the issuance of the  
10 permit.

11           MR. REED:

12           And I understand the portion of the  
13 objection and DEP actually stating the reason why  
14 they're not taking a competent objection. The first  
15 part of your answer, though, you believe all permits  
16 that are issued should have a rationale attached.  
17 Should we then translate that mentality into all  
18 permits issued by local and state government? For  
19 instance, the Building Code which has been an issue  
20 quite a bit, in rural Pennsylvania, at least in  
21 Indiana County should ---. And if I wanted to build a  
22 barn should they then be required to submit a  
23 rationale as to why they're permitting the need to  
24 build a farm on the another property? Is that a  
25 blanket statement, or do you single out one industry?

01 MR. KLEISSLER:

02 I'm specifically referring to oil and gas  
03 permits issued under the Oil and Gas Act.

04 MR. REED:

05 Okay. So not all DEP, just related to  
06 the oil and gas industry.

07 MR. KLEISSLER:

08 I don't even want to comment on it  
09 without studying it.

10 MR. REED:

11 Okay. We'll go with that answer. My  
12 second question deals with an issue that I actually  
13 haven't heard it before that was put forth by Ms.  
14 Braverman, and it's actually a question for the two  
15 gentlemen from the Farm Bureaus. You mentioned in  
16 your testimony that there's no requirement to install  
17 pipes below the plow depth, and that's not a complaint  
18 that I've heard in Indiana County. And I was  
19 wondering if the two gentlemen from the Farm Bureaus  
20 do actually have specific farmers who've had that  
21 problem occur? And Ray, you and I are from the same  
22 county, we probably come from the same folks, I just  
23 never heard of that issue being brought up.

24 MR. SLEPPY:

25 That's not a problem, and I've never

01 heard of that.

02 MR. DAVIS:

03 Most people with gas do put it deeper.

04 There's no requirement that they do it.

05 MR. REED:

06 Okay. So it's more of just for future  
07 reference that you might just felt a little bit secure  
08 with. It's not based upon an actual occurrence.

09 MR. SLEPPY:

10 Indiana County and some of the old mines  
11 are on the surface, some are very close to the  
12 surface, new lines are only through the well.

13 MR. REED:

14 But again, within the two regions, you  
15 two gentlemen have --- obviously you have heard  
16 somewhere, but you guys have never heard that's been a  
17 problem, and I've never been through the Farm Bureau  
18 in Indiana County. Okay. Thank you.

19 MS. BRAVERMAN:

20 Can you respond to that, please?

21 MR. REED:

22 Sure, if you'd like.

23 MS. BRAVERMAN:

24 Yes. Just, the comment that I have in  
25 my testimony is in response to several forms that we

01 held public forums where people came in and they  
02 talked about some of the problems that they've had,  
03 some of the issues, so that was where the record came  
04 from. A gentleman handed me a photograph where pipe  
05 is clearly ---.

06 MR. REED:

07 Is that from Cambria County?

08 UNIDENTIFIED SPEAKER:

09 Centre County.

10 MR. REED:

11 Like I said, we dealt with this issue for  
12 a number of years in Indiana County. I never heard  
13 that issue before. I know the Farm Bureau has been  
14 intensely involved with the issue and they've never  
15 mentioned it to me before. So I was just curious. My  
16 third and final question is more of a technical  
17 question about the right of first refusal that a  
18 number of you talked about. The technical side is  
19 more or less how would that process work? Who would  
20 set the price that somebody would be offered? Say,  
21 from a Sheriff's sale, and in their rights say they're  
22 going to a Sheriff sale, you want the surface owner to  
23 have the right of first refusal to purchase that  
24 before it hits the open market? How would you propose  
25 that we would set that price? Who would determine



01 what that price would be before the DEP, the fair  
02 market? How would you actually do that?

03 MS. TUSCANO:

04 It's my proposal to allow the landowner  
05 to buy back their mineral rights. I want to explain.  
06 In my situation, we bought our land in 1977. We  
07 didn't realize there was no --- we didn't have the  
08 mineral rights to the land. In the late '80s the coal  
09 company that had the mineral rights quit paying taxes.

10 They didn't have a coal business, and we were told  
11 that there was no mineral coal under the land, so we  
12 were really concerned about it. It wasn't until last  
13 year, until we found out about coal bed methane. With  
14 our conservation, I made an effort to go back and buy  
15 the minerals.

16 And we found out that in 2002 the  
17 landscape had come in and bought out 2,600 acres of  
18 the mineral rights for \$200. So if you want to figure  
19 out price plus inflation, that he paid twice the  
20 price, ten times the price, I can still buy my mineral  
21 rights back for less than \$50. The thing is that  
22 these people that are doing this are profiting at the  
23 expense of the surface owner. They're coming in. We  
24 have no indication that this is going on and they're  
25 basically stealing our surface, because up until that

01 point there was no threat to the surface to those  
02 mineral rights.

03           So I don't really feel a big obligation  
04 to pay them a lot of money for what they've done to  
05 us, and this is going on a lot. A lot of coal is not  
06 minable, is still drilling the land and surface owner  
07 is not aware of it at all. I'd ask you, have you ever  
08 heard of coal bed methane until the last few years? I  
09 mean, we had no idea --- to the integrity of our land.

10           MR. REED:

11           I guess your scenario is kind of an  
12 extreme. The scenario I would think of is perhaps  
13 you've got a farmer who does own his mineral rights.

14           MR. TUSCANO:

15           He sold them willingly, ---.

16           MR. REED:

17           That's what I'm saying, you got mineral  
18 rights for 1,000 acres and you only actually have the  
19 surface rights to 200 acres, and those are going to go  
20 to Sheriff sale. You got to make the bad guy out to  
21 be the guy who purchased, which apparently is  
22 speculating who purchased your mineral rights under  
23 that scenario, but it's not only speculating,  
24 sometimes it's just an honest to good hardworking  
25 citizen that happens to own those mineral rights

01 because whatever is sold years ago. And I can see in  
02 your case, you don't really care what the market value  
03 is, you're just trying to make money. You just have  
04 the mineral rights, but what if you do have an  
05 indecent person or individual or family who owns it,  
06 how do you come up with what is the fair market value  
07 for those rights to be sold?

08 MR. TUSCANO:

09 I'm hearing about other states that have  
10 laws that require that the mineral rights refer to  
11 surface owner if they're not used over a certain time.  
12 Any mechanism at all that gives the surface owner some  
13 chance to restore these land would be fine with me.

14 MR. REED:

15 I'm not really arguing with the concept,  
16 I'm just wondering technically, how do you actually  
17 put that in the statute, that there's a fair market  
18 value, because somebody made --- you know, a coal  
19 company maybe said, well, we'll pay \$10 million for  
20 those rights. You know, somebody else would have paid  
21 \$50 for those rights. Obviously, those are two  
22 extremes, so how do you mediate those two extremes for  
23 a fair market value?

24 MR. TUSCANO:

25 I definitely need to address my opinion,

01     though.

02                   MR. REED:

03                   There's no concept, at least as of yet,  
04     on how you want to get ---?

05                   MS. TUSCANO:

06                   We'll work with coming up with a  
07     mechanism.

08                   MR. REED:

09                   And like I said, I didn't know if maybe  
10     you guys had proposals on how to do that or it's just  
11     kind of the concept of the phase. Like I said, I  
12     don't have a concept, I'm just really kind of looking  
13     at the technical side of how you would actually  
14     implement the program. Thank you.

15                   MS. TUSCANO:

16                   My testimony, I was only advocating for  
17     preserved land, so ---.

18                   MR. REED:

19                   Yes, and I do recognize that.

20                   MS. TUSCANO:

21                   Coal companies are threatened by the  
22     preserved land. If you enact such law, I think the  
23     amount of preserved land would grow a lot. I have  
24     probably 1,000 acres of land in my township that go  
25     under conservation easements.

01 MR. REED:

02 It may be a good idea to evaluate for  
03 those. Thank you.

04 CHAIR:

05 If there are no other questions, let me  
06 elaborate on one thing. I suppose myself and my  
07 co-chairman, why don't we say to you, for those of you  
08 who did not get your names in to give testimony, we  
09 would be most willing to hear from you. Our staff  
10 that you see will give you a card and you would be  
11 able to address us down in Harrisburg. It will be a  
12 week to ten days before we get this report from the  
13 stenographer. We always say, regardless of what side  
14 that has become fashionable to observe, but what went  
15 on 50 years ago, we don't know is necessarily is the  
16 best for today.

17 I would hope that what time you've given  
18 will be what I've submitted to the best and to the  
19 advantage of our society in Pennsylvania. That is my  
20 hope and my wishing, that you all get back home  
21 safely. I thank you for your time and your effort. I  
22 thank my members' diligence. If there's no other  
23 business --- do you have anything to say, Mr. Yewcic?  
24 You've said enough.

25 MR. SLEPPY:

01                   This will only take a minute. I think I  
02                   want to make sure that everybody understands that  
03                   Great Lakes Energy wasn't present here today. They  
04                   get some bad press that they shouldn't. That's a good  
05                   organization. They've treated the farmers very well.  
06                   If everybody acted the way they did we wouldn't be  
07                   here today.

08                   CHAIR:

09                   Again, we thank you. Our staff, my  
10                   executive director has cards we can give you. We  
11                   represent you, and we thank you very much.

12                                   \* \* \* \* \*

13                                   HEARING CONCLUDED AT 3:40 P.M.

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