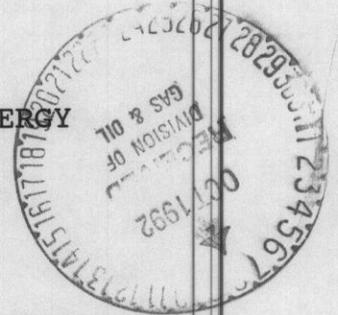


COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF GAS AND OIL



IN RE: THELMA MUSICK AND CURTIS
RASNAKE, SURFACE OWNER

VS.

EQUITABLE RESOURCES EXPLORATION

)
)
)
) DOCKET NUMBER:
) VGOB-92/10/20-0282
)
)
)

MOTION TO DISMISS

COMES NOW Equitable Resources Exploration (EREX), by counsel, and for its Motion to Dismiss the appeal of Surface Owners to the permit for the construction of a gathering line known as BF-44 Section 2 filed by Thelma Musick and Curtis Rasnake in the above-referenced cause, would respectfully show unto the Virginia Gas and Oil Board [BOARD] as follows:

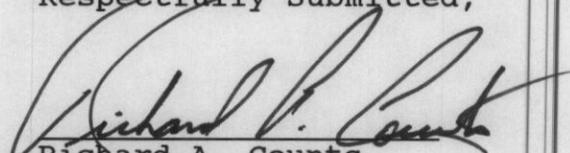
1. On September 9, 1992, in proceedings held before the Inspector an informal fact finding hearing was had relative to the issues and objections raised by Thelma Musick and Curtis Rasnake to the construction of a proposed pipeline known as BF-44, Section 2.
2. The Inspector found the underlying objection, for which this appeal is taken, was not timely made by surface owners, Thelma Musick and Curtis Rasnake as provided by § 45.1- 361.35.

In support of its Motion to Dismiss the Surface Owners Appeal, EREX would respectfully show as follows:

3. Surface Owners Thelma Musick and Curtis Rasnake are without standing to prosecute this Appeal for lack of a timely objection to the gathering line permit as provided by §45.1-361.35.

WHEREFORE, EREX, by Counsel, respectfully requests this board to dismiss Surface Owners appeal of the Inspectors Decision of September 16, 1992.

Respectfully Submitted,


Richard A. Counts,
Counsel for Equitable
Resources Exploration

Richard A. Counts
Attorney At Law
2550 East Stone Drive
Suite 120
Kingsport, TN 37660

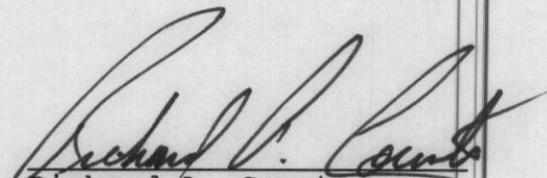
CERTIFICATE OF SERVICE

This is to certify that true and exact copies of the foregoing Motion were mailed, postage prepaid, this the 8th day of October, 1992, to the following:

Sandra B. Riggs, Esq.
Assistant Attorney General
Post Office Drawer U
Big Stone Gap, Virginia 24219

Byron T. Fulmer
State Oil and Gas Inspector
Department of Mines, Minerals and Energy
Division of Gas and Oil
Post Office Box 1416
Abingdon, Virginia 24210

Mr. Curtis Rasnake
Ms. Thelma Musick
950-L-39 Hillman Highway
Abingdon, VA 24210


Richard A. Counts

[pleading:erex:mr-711.105]

LAW OFFICE OF
RICHARD A. COUNTS
ATTORNEY AT LAW
2550 E. STONE DR., SUITE 120
KINGSPORT, TENNESSEE 37660

ADMITTED IN
TN, VA

(615) 378-4999
FAX (615) 378-4097

VIA FACSIMILE

October 14, 1992

Mr. Benny R. Wampler
Chairman
Department of Mines, Minerals & Energy
P.O. Drawer 900
Big Stone Gap, VA 24219

Re: V-2460 Pooling (Docket Number VGOB-92/10/20-0281)
Appeal of Thelma Musick and Curtis Rasnick to
Pipeline SF 44, Section II (VGOB-92/10/20-0282)
Our File Number: 1546-MR-712
1546-MR-711

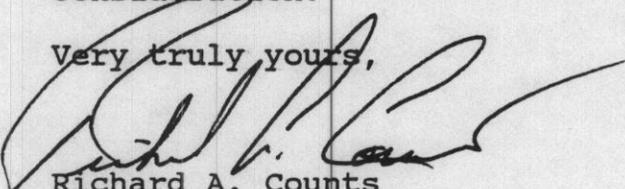
Dear Mr. Wampler:

On behalf of Equitable Resources Exploration, I hereby request that the above referenced matters be continued to the November meeting of the Board, the November 1992 Docket. I have spoken by telephone with Ms. Thelma Musick and she has consented to a continuance.

Please advise me at your earliest opportunity regarding the Boards' decision on this request.

Should you wish to discuss this matter with me or need additional information please do not hesitate to call. Thank you for your consideration.

Very truly yours,

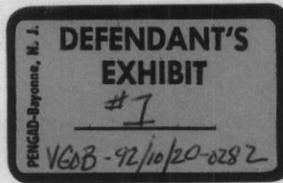

Richard A. Counts

RAC/krl

cc: Rand E. Sterling
Thelma Musick
Curtis Rasnick

[letters\bw.909]





Department of Mines Minerals & Energy
Division of Gas and Oil
P. O. Box 9416
Risingdon, VA.

Dear Sir:

This Statement is to inform you that —
Curtis S. Rasnake and Thelma Musick, do
firmly object to the methane pipe line proposed
to cross our property for the use of wells —
No. — Elex Well VC 1863
Elex Well VC — 1857

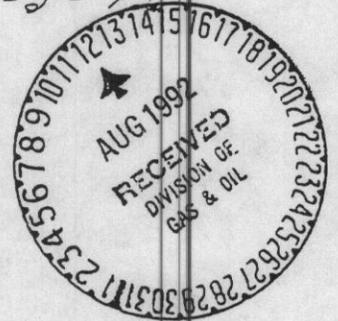
objections AS Follows:

1. In this immediate Area are ground breaks From
subsidence caused by under ground mining,
during this procedure unsafe.
2. The destruction of Timber
3. Destroying habitat for wild life and
contaminating the water source used by
wild life.
4. This pipe line would devour the
Future plans we have for our property.

Curtis Rasnake
And
Thelma Musick

8-5-92

Department of Mines Minerals & Energy
Division of Gas and Oil
P. O. Box 9416
Risingdon, VA.



Dear Sir:

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No. - EXEX WELL VA — 1863

EXEX WELL VA — 1857

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2. The destruction of Timber
3. Destroying habitat for wild life and
contaminating the water source used by
wild life.
4. This pipe line would desound the
Future plans we have for our property.

Curtis Rasnake
And
Thelma Musick



O. GENE DISHNER
DIRECTOR

BYRON T. FULMER
GAS AND OIL INSPECTOR

COMMONWEALTH of VIRGINIA

Department of Mines, Minerals and Energy

Division of Gas and Oil

P. O. Box 1416

Abingdon, Virginia 24210

Phone: (703) 676-5423

FAX: (703) 676-5459

NOTICE OF INFORMAL FACT FINDING HEARING

BF-44 SECTION 2 SYSTEM

New Garden District, Russell County

Docket Number IFFH-51

Pursuant to § 45.1-361.35 of the Code of Virginia, the State Gas and Oil Inspector has scheduled an Informal Fact Finding Hearing to consider objections received from Curtis Rasnake and Thelma Musick in a letter received August 12, 1992.

Curtis Rasnake and Thelma Musick object to the laying of this pipeline for the following reasons:

1. Subsidence caused from underground mining in the immediate area causing the procedure unsafe
2. Destruction of timber
3. Destruction of habitat for wildlife and contamination to water source used by wildlife
4. Devour future plans of property.

This notice has been sent by certified mail to the well operator and to parties identified in the application.

DATE OF HEARING: The hearing is scheduled for Wednesday, September 9, 1992 in the conference room of the Division of Gas and Oil, located at 230 Charwood Drive in Abingdon, Virginia. The time of the hearing is 10:00 am. If you should have any questions, you may contact the Division at (703) 676-5423.

Date mailed by certified return receipt mail 08/26/92.

IFFH #51
ERECT BF-44 Section 2 System
Sept. 9, 1992

Department of Mines, Minerals and Energy
Division of Gas and Oil

<u>Name</u>	<u>Organization</u>	<u>Address</u>	<u>Phone</u>
Richard A. Cant	CMA	Kingsport, Tenn.	378-4999
George Maxwell	Equitable	Kingsport, TN	(615)378-5101
Samuel L. Spillwood	Equitable	Big Stone Gap, VA	703-523-5003
R. Philip Hubbard	Equitable	Big Stone Gap, Va	703-523-5003
Thelma Merrick		Richmond, VA	703-124-4424
Gary Eade	DGO		

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COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF GAS AND OIL

THELMA MUSICK AND CURTIS RASNAKE,
SURFACE OWNERS

VS.

EQUITABLE RESOURCES EXPLORATION, INC.
PROPOSED PIPELINE BF-44 SECTION 2

BEFORE THE
GAS AND OIL INSPECTOR
DOCKET # IFFH 5192

PROCEEDINGS:

On September 9, 1992, at 10:00 AM, an Informal Fact Finding Hearing was convened before the Gas and Oil Inspector in the Division of Gas and Oil's Conference Room at 230 Charwood Drive, Abingdon, Virginia. The hearing was convened to hear objections raised by Thelma Musick and Curtis Rasnake, surface owners, to the construction of a proposed pipeline, designated as BF-44, Section 2 System by Equitable Resources, herein known as EREX. Certificate of Service for notice under § 45.1-361.35.G was given by the Division of Gas and Oil as to the date and time of the hearing to all parties listed in the application.

Present at the hearing were Thelma Musick, surface owner, and Mr. Richard Counts, counsel for EREX, Mr. George Mason, Mr. Phil Hubbard, of Equitable Resources and Mr. Sam Smallwood, MSES Consultants appearing on behalf of EREX.

FINDINGS OF FACT:

The Inspector finds that:

(a) The objection submitted by Thelma Musick and Curtis Rasnake was not received within the specified time limits as set out in § 45.1-361.35.A, based upon all information available to the Inspector in regards to the filing requirements under the referenced section. However, the Inspector finds that the objections were significant at the time to warrant the hearing.

(b) The request for a continuance to the hearing as requested by the plaintiff, Thelma Musick, is denied. The Inspector finds that appropriate notice of the hearing was properly sent and served under the requirements of § 45.361.35.G.

(c) As to the objections raised by Thelma Musick, the Inspector finds that the objections do not meet the requirements of § 45.1-361.35.B (1).(2), but addresses safety issues under (3). Testimony and evidence presented at the hearing, however does not support any claim that the operations proposed by EREX would present a hazard to the safety of any person.

DECISION OF THE INSPECTOR:

The Inspector finds that the evidence and testimony as presented at the September 9, 1992 hearing does not support the objections as filed by Thelma Musick and Curtis Rasnake and are hereby dismissed.

RIGHT OF APPEAL:

Any party aggrieved by a decision of the Inspector may appeal the decision to the Virginia Gas and Oil Board by filing a petition with the Board within ten days following the receipt of the decision. No petition of appeal may raise any matter other than matters raised by the Inspector or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact find hearing.

SIGNED this 16th day of September, 1992

Raymond J. Suber
State Gas and Oil Inspector

Sept 23-1992

96D-1-39 Hillman Hwy.
Abingdon, VA.

Virginia Gas and Oil Board
P.O. Box 1416
Abingdon, VA. 24210
Hon. Benny Wampler, Chairman

Re: Thelma Musick and Curtis Kasnake
Equitable Resources Exploration, Inc.
Proposed pipeline BF-44 Section 2

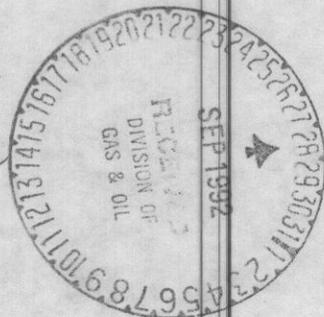
Dear Mr. Wampler,

Curtis Kasnake and Thelma Musick, hereby petition
and request a hearing before the Virginia Gas and
Oil Board to appeal the decision made by Mr.
Byron T. Fulmer, State Gas and Oil Inspector
on Sept. 16-1992 regarding the pipe line crossing
our properties for the use of wells No. EREX VC-1863
EREX VC-1857
Designed as BF-44 section 2 system by Equitable Resource
Known as EREX.

The Inspector granted the permits over our objections.

Thank you for your cooperation and attention
to this matter.

Sincerely yours
Thelma Musick
Curtis S. Kasnake



INFORMAL FACT FINDING HEARING

VGOB 5192, BF-44 SECTION 2

HEARING DATE SEPTEMBER 9, 1992

Tom Fulmer

Good morning my name is Tom Fulmer. I am the State Gas and Oil Inspector. To my left is Ms. Korell who will be recording the proceedings this morning. This morning's hearing is being convened pursuant to Section 45.1-361.35.G of the Code of Virginia. For reference the case docket number is IFFH 5192. A permit application for EREX proposed pipeline system BF-44 Section 2 was submitted to the Division of Gas and Oil has received objections to the construction of the proposed pipeline in the New Garden District of Russell County by Mr. Curtis Rasnake and Thelma Musick by letter dated August 5, 1992, and received on August 12. Curtis Rasnake and Thelma Musick both received notice to the application on July 27, 1992. The objection was submitted within the specified time limits required under law. Following is a summary of the objections filed for the proposed wells. Both Curtis Rasnake and Thelma Musick object to the construction of the pipeline as stated: that the existence of subsidence in the area deems the construction of the pipeline unsafe, that the construction of the pipeline will cause destruction of the timber, that the construction of the pipeline will destroy the habitat for wildlife and contaminate the water source used by wildlife, and the construction of the pipeline would devour the future plans for the surface property. The evidence and testimony will be examined in accordance with the criteria set out in Section 45.1-361.35 and VR 480-05-22.1, Section 1.14 of the regulation. The proceedings will be conducted pursuant to Section 9-6.14:11 of the Code of Virginia, regarding proceedings to be conducted under informal fact finding hearings. For the proceedings this morning will you please acknowledge your presence at this hearing by indicating your name and if you are being represented by counsel: Mr. Curtis Rasnake.

Thelma Musick

Curtis is not here today because he did not have time to get down here.

Tom Fulmer

Thelma Musick.

Thelma Musick

I am Thelma Musick and I did not receive the notice for the hearing and I ask for the continuance on it.

Tom Fulmer

Just whether your here or not, I will give you a chance to put your statement on record. EREX.

Rick Counts

Richard A. Counts, A. George Mason Jr. representing EREX.

Tom Fulmer

For the purpose of notification under the notice of hearing for these proceedings, Ms. Korell was all parties

required to be notified under Section 45.1-361.35.G of the Code of Virginia been notified?

Susan Korell

Yes, to the best of my knowledge all parties where notified by certified return receipt mail.

Tom Fulmer

The proceedings will be conducted as follows: I will receive testimony and evidence on proposed pipeline BF-44 Section 2 System first from Mr. Curtis Rasnake and Thelma Musick and then EREX will be allowed to cross examine. Then I will receive testimony and evidence from EREX and Curtis Rasnake and Thelma Rasnake will be allowed to cross and examine. The inspector reserves the right to conduct any inquiry which will facilitate his decision in this hearing. When you speak, please speak clearly in the microphone. For the record the certified maps indicated that the objecting parties surface will be affected by the construction of the pipeline. I will first call upon Thelma Musick to state her objections and to present testimony and or evidence in this matter.

Thelma Musick

I'm Thelma Musick and we object to this. Curtis is not here today due to the fact that he didn't have the time after the notice that he received to get down here. I request a continuance because I did not receive my notice. Someone else accepted it from the mail carrier and it was not anyone in my household. We object to this because there is subsidence in the area and there are still cracks coming in the ground.

Tom Fulmer

Let me go ahead and rule on the continuance. Mr. Counts do you want to put something on record regarding her request for a continuance?

Rick Counts

Yes sir. On behalf of Equitable Resources we do object to a request for a continuance. And indeed we request a dismissal of the objection based upon the failure to meet the requirements of Virginia Code 361.35 with regard to timeliness. As you indicated Mr. Inspector the notification was delivered on July 27, 1992. 361.35 provides for all objections shall be filed within 15 days of the objecting party received notice required. The objection was not filed, not received by this office and henceforth filed until August 12, 1992 which was on the 17th day. We submit to the Inspector that the timeliness issue is not discretionary and is required by the Virginia Administrative Act.

Tom Fulmer

I want to go back to the fact on the continuance. Do you want to put a statement on the continuance or do you feel comfortable with it?

Rick Count

Yes sir.

Tom Fulmer

Let me rule on the continuance first. Upon advise of counsel, which is the Assistant Attorney General I placed this question with the Attorney General. In regards to the requirements of regulations under notification of a hearing their interpretation is that notification by certified mail was given in accordance with the regulation. Upon advise of counsel the ruling is that the continuance is denied. Notification was given as stipulated in the regulation, and we will proceed the hearing. You may go ahead and start your objections ma'm.

Thelma Musick

There is subsidence in this area and in my opinion that when ground breaks come it is not going to support the pipeline. And they have already destroyed a lot of timber on my property especially and on Curtis' to.

Rick Counts

I am going to object Mr. Inspector if you will allow objections at this time. Section 361.35 paragraph B is quite clear in terms of the types of objections that can be heard from surface owners and an objection in the respect of timber is not one of those objections.

Mr. Fulmer

So noted Mr. Counts. Go ahead Ms. Musick.

Thelma Musick

There will be a lot of timber destroyed. There is a stream of water on Curtis' property that will be affected to. There is no water on my property because it was destroyed by underground mining. But there is water that runs down into Alvy Creek from Curtis'.

Tom Fulmer

Surface water?

Thelma Musick

It is a spring. It is just about, I'm sure it's not 500 foot from where the well is. It's more or less 300. It's down a hill on the backside from where my property is. I can show you on the map where it is.

Tom Fulmer

In regards to this water, spring are you saying that the construction of the line will destroy the surface water or the well?

Thelma Musick

It would affect it. It certainly would not be good for the wildlife and supportive timber and whatever else grew on the property. If a leak comes in the pipe its going to affect the water.

Tom Fulmer

Could you state that again?

Thelma Musick

What part?

Tom Fulmer What did you just say, I did not quite hear it.

Thelma Musick Okay. I said if there should come a break in it its going to affect the wildlife, its going to affect the water, anything within the area. If there is subsidence and pulls the pipe apart, that's certainly going to happen. And we don't know that it won't happen.

Tom Fulmer In regards to the what I have heard so far. You say the line constitutes a safety problem or hazard.

Thelma Musick I think so.

Tom Fulmer To safety of any person.

Thelma Musick To any person, any animal, or the general area.

Tom Fulmer So your objections based upon safety is.

Thelma Musick A great deal of it, yes.

Tom Fulmer Okay.

Thelma Musick And the destruction of property.

Tom Fulmer Normally in the timber issue, destruction of timber. If you do construction of any type, you are going to destroy the timber.

Thelma Musick A portion of it, yes.

Tom Fulmer A portion of it. One of the objections you had was construction of the pipeline would destroy the habitat for wildlife and contaminate the water sources used by wildlife. In the sense that it would destroy the water source this again in regards to if something happened to pipeline.

Thelma Musick Right.

Tom Fulmer The fourth objection you put in your letter concerns the construction of the pipeline would devour the future plans for the surface property. What sense are we talking about?

Thelma Musick Well when Curtis purchased his property which was back in the early 80's. He had plans to, and we still have plans to build a resort there and combine the two properties. And we certainly don't want pipeline going across through it.

Tom Fulmer Does the construction of the line, is it unreasonable do you think?

Thelma Musick I think it is very unreasonable.

Tom Fulmer In what sense?

Thelma Musick Well we could not build what we're talking about. We couldn't make roads over the pipeline. It would just be unuseful really.

Tom Fulmer Okay. Is there anything else you would like to say to put on record?

Thelma Musick Nothing more than we couldn't build our facilities if the pipeline is going down through the property.

Tom Fulmer Anything else you would like to say?

Thelma Musick I think that's it for right now.

Tom Fulmer Mr. Counts do you have any questions for Ms. Musick?

Rick Counts Yes. Ms. Musick you indicated you have a number of, first of all I would like to ask when did the underground mining take place?

Thelma Musick It was in the 80's and 70's I think. I have all of that, but I do not have it with me.

Rick Counts When approximately were you springs sunk?

Thelma Musick In 86.

Rick Counts In 86.

Thelma Musick One of them went out as we discussed before in August of 1986, and the other one went out in October of 86. That was the two adjoining. We had three springs that were damaged, but I don't have the exact dates, it was along about the same time.

Rick Counts And Mr. Rasnake's spring did survive the long wall mining?

Thelma Musick It did survive. It is further over and at a different level.

Rick counts You indicated that you had some ground breaks in the area. When did these take place?

Thelma Musick The first one I found in the road way was in November of 1990. And the one out by the barn which is very close to

where the pipeline will be going if I understand the map correctly was found in February 91.

Rick Counts And you own approximately how many acres Ms. Musick?

Thelma Musick 22 1/2.

Rick Counts And are these the only two breaks that have occurred on your acreage?

Thelma Musick Well that I know of. It has grown over and there is possibly more, but I don't know where they are. And there has been others that have filled up. There is one right above the house that has not completely filled up yet and it is pretty long. It is not very deep, but it is filled in.

Rick Counts And have you noticed any recent indication of additional breakage or subsidence?

Thelma Musick Not since we went over it in March. But I haven't been all over my property.

Rick Counts Is it currently your understanding that all mining operations have ceased underlying your property?

Thelma Musick I think so, that is my understanding.

Rick Counts And that has been the case for some five years or so?

Thelma Musick Well possibly, but the ground is still breaking.

Rick Counts I'm sorry, I thought you indicated recently you hadn't noticed any additional breaks occurring.

Thelma Musick In 1991 which is well past the five years that they mined under us, there is breaks.

Rick Counts Okay. By 1991 there would have been approximately how many breaks by this time?

Thelma Musick There was two and there was two that filled up. The one up on the hill I forgot it. It was several years ago and it's smoothed over too. That's sandy soil and it does move.

Rick Counts The only reason I'm asking is I was a little bit confused because in reviewing the testimony provided before the the Well Review Board if you'll recall the hearing took place in 1992. You indicated there was one break on your property that you believed to me as a result of subsidence

and that you had noticed no further breakage or subsidence occurring on your property.

Thelma Musick

Not since then, but as I said we have those others and I did bring them in, maybe not at that particular time.

Rick Counts

Okay. Thank you. You indicated that you were concerned that the breakage of this gas gathering line could contaminate your water source. Could you further expound upon that?

Thelma Musick

Well the drain off would carry whatever is in the pipes away. And it would naturally go in the streams.

Rick Counts

And are you aware of what is in the pipes?

Thelma Musick

Not really. Other than the gas.

Rick Counts

And is that gas in liquid form or vapor form?

Thelma Musick

It is in vapor form to my understanding.

Rick Counts

Then could you explain to me how if the gas is in vapor form it is going to run off?

Thelma Musick

I'm not that well acquainted with it. I can't explain that as of now. I am certainly aware that it wouldn't be good for it.

Rick Counts

I would also like to indicate one other thing Ms. Musick and that is that you indicated that when Curtis purchased the property that you were concerned about being able to build a resort and that as a result of this gathering line that the utilization of the property would be put to end and be of no further use or value. And I would only say to you from the stand point of Equitable that it seems that while you are very concerned with your property rights and certainly you should be concerned with your property rights. I would also like to indicate to you that at the time you purchased your property as well as the time Mr. Rasnake purchased his property that there had been a minerals severance for wells over 50 years which severed the mineral estate from the surface estate. What you are asking Equitable to do is respect your surface which they are tempting to do in conjunction with the regulations that are promulgated with this Department. But yet you don't wish to respect the rights of Equitable as a mineral owner to develop their estate. And without their ability to develop their estate which they have certainly paid good valuable consideration for is rendered useless as well. Mr. Fulmer I would like to put one witness if I may to testify on behalf of Equitable.

Tom Fulmer Are you through cross examining?

Rick Counts Yes sir, I am.

Tom Fulmer Go ahead Mr. Counts

Rick Counts Thank you. I would again ask Mr. Fulmer if I may inquire in terms if at what point you will rule upon my request to dismiss?

Tom Fulmer I'm going to let you put your evidence and then do individual rulings.

Rick Counts I would like to call Mr. Phillip Hubbard.

Phillip Hubbard I am Phillip Hubbard, pipeline operations supervisor for Equitable Resources.

Rick Counts Mr. Hubbard, would you state your employment and job qualifications?

Phillip Hubbard I have been in the natural gas pipeline industry since 1984 to the present. I worked previously with ANR Production Company installing high pressure gas lines and gathering systems.

Rick Counts Is it a correct statement to say you over see permitting, surveying work, and construction work on these pipelines?

Phillip Hubbard Yes that is correct.

Rick Counts Does Equitable own the minerals underlying both the Musick and Rasnake's tracts?

Phillip Hubbard That's correct.

Rick Counts And are you familiar the plan of operation which has been submitted to the DMME?

Phillip Hubbard Yes I am.

Rick Counts Would you review that briefly and describe the plan of operations for gathering line construction on these two tracts.

Phillip Hubbard Yes. On these two tracts the terrain is not as steep as it is certain areas of the Russell County area. The right of way which would be 30' wide for the 2" gathering system and 50' wide for the 3" gathering system would be virtually 80% cleared of timber and vegetation on initial construction to bury the pipe. It would be reclaimed. First of all I should say that the pipe once installed for

State and Equitable's standards for the material, that is the pipe itself for the structural integrity of the pipe. Once the pipe is initially installed, tested, reclamation would take place. It will all be followed per guide lines by the State and Equitable Resources to DGO guidelines for soil and erosion control, which includes the sowing of the front and back, the wind rowing of the timber in accessible area, and reclaim any disturbed areas that are damaged by the particular operations.

Rick Counts

And is a correct statement saying Equitable retained responsibility for maintaining this pipeline and the right of way.

Phillip Hubbard

Yes sir that is correct.

Rick Counts

You heard Ms. Musick testify in terms of her concerns with regard to contamination of Mr. Rasnake's water source. Could you indicate for the Inspector whether or not you feel this could incur.

Phillip Hubbard

There is no way to my understanding based on the system that we are proposing to operate how water contamination could occur in this area.

Rick Counts

Have you also taken into consideration soil and sediment control, topography, subsidence and other general conservations in terms of submitting and implementing this pipeline application?

Phillip Hubbard

Yes sir. The original pipeline route was surveyed and it has also been walked by myself and others. We say no unusual geographical problems that would be presented in constructing this pipeline.

Rick Counts

Now in terms, as you are aware Mr. Hubbard you and I have visited this property together is it fair conclusion to state both these wells are located essentially on the ridge top and the gathering line basically follows the contour of that ridge line?

Phillip Hubbard

That's correct.

Rick Counts

You have heard Ms. Musick indicate that she has concern with regard mining activities in terms of breakage, etc. Does Equitable maintain or operate gathering pipeline in other areas where mining has occurred previously and is occurring today?

Phillip Hubbard

Yes, yes both types of mining stripe mining, deep mining, longwall mining whatever.

Rick Counts It is my understanding that you have over 100 thousand feet of pipeline overlying longwall mining area. Is that correct?

Phillip Hubbard That is approximately correct. Yes.

Rick Counts And it is also my understanding that you have 100s of miles of other gathering lines over other active and inactive mining areas.

Phillip Hubbard Yes sir that is correct.

Rick Counts Mr. Hubbard have you ever experienced any problems at all with respect to subsidence in conjunction with these pipelines?

Phillip Hubbard Haven't experienced any problems with subsidence, no.

Rick Counts Approximately what would be the operating pressure at the BF-44 System?

Phillip Hubbard The operating of the pipeline after initial flow would be approximately 60 to 70 pounds.

Rick Counts And would you generally characterize this is a low pressure gather line?

Phillip Hubbard Yes sir, low pressure gathering line.

Rick Counts Mr. Hubbard is your professional opinion that the operation plan for installation of the BF-44 System 2 gathering line is affect and can be implemented safely and would constitute no safety hazard to any person?

Phillip Hubbard Yes sir absolutely.

Rick Counts Okay. Mr. Fulmer I have no further questions.

Tom Fulmer Do you have any questions for Mr. Counts' witness?

Thelma Musick Yes. Can you guarantee that there would never be any breaks in the pipeline caused by maybe the ground shifting or splits in the pipe that would cause a fire?

Rick Counts Mr. Fulmer, objection. The witness has already testified he has experienced no problems whatsoever and obviously no one can make any guarantee in that any unfortunate circumstance certainly if someone goes in and operates extremely heavy equipment or something like that the pipeline could break. But the witness has testified that he has not had any problems whatsoever in connection with

the type of operations where Ms. Musick has indicated that.

Tom Fulmer I appreciate that Mr. Counts, I would like for Mr. Hubbard to answer that question though.

Phillip Hubbard Okay would you repeat the question please. Can I guarantee it?

Thelma Musick Uh huh.

Phillip Hubbard Ma'm I could not guarantee anything but it is my experience for the last nine years or so that we haven't had that problem. The tensile strength of the pipe, what you're speaking of, if I understand, would be the ground subsiding and breaking apart and tearing the pipe into. We have never encountered that problem at this point. But as far as guaranting you that there could never be anything not go wrong, it would be difficult for me to guarantee anything.

Thelma Musick Well if the pipe comes apart or burst, its likely to cause a fire right?

Phillip Hubbard No ma'm, actually if it comes apart or ruptures, the pipe is checked on both ends. There are check valves installed where that entire system would not be blown down. Just a specific section from a tie in point to the well would blow down. It would happen very quickly, within a matter of minutes for the size pipe we are talking about and the volume its holding. The point of ignition, there would also have to be something for the point of ignition, normally existing in the woods and the area unless someone was standing there purposely trying to destruct something, that probably would not be available either.

Thelma Musick You mentioned that they reclaim and cleaned up the area that the pipeline crossed, my place is covered with rocks still that they put over the hill from the well. I brought the pictures out and showed them to you sometime back. They're still there.

Tom Fulmer That's in regards to the permit to the well. I appreciate that, it is duly noted.

Thelma Musick But I still have the same concern with the pipeline because they did not clean up after the well.

Tom Fulmer You're concerned that they wouldn't clean up after building the pipeline.

Thelma Musick Well, I couldn't expect it.

Tom Fulmer Okay, fair enough.

Thelma Musick And you mentioned there that you couldn't run heavy machinery over it. Well we would have to run heavy machinery around in order to build the resort and facilities to go with it.

Rick Counts I'm sorry ma'm you must have misunderstood what I said. If someone took a dozer or something like that to pipe or something like that and tried to break it, it certainly would break.

Thelma Musick Well we certainly wouldn't try to break it. But dozers would be used up there.

Rick Counts Well I'm sure dozers would have to used in terms of equipment, Mr. Hubbard could answer that question for you. What type of equipment would be used trenches, backhoes, what.

Thelma Musick That's not what I'm talking about. I'm talking about what we would be using to build the resort.

Tom Fulmer That's fine. I understand that. I've got some questions, are you through cross examining him?

Thelma Musick Right.

Tom Fulmer In regards to subsidence, in regards to the questions to subsidence I want to refer that on to my decision when I do make my written decision. As far as the destruction of the timber, I will address that. That is a civil matter which I cannot address. It is not really allowed under the objection process under the regulations. The question to the surface water and spring contamination I will address within my decision. In regards to the facilities that you propose are there any plans that you have with you today in regards to a resort that you plan on building, or is that just something you all thought about doing. You don't have any actual plans?

Thelma Musick It's not mapped out, but we do have initial plans as to what will be used there. Of course with the water, at the time he brought his property I had plenty of water and he had water to, which he still has. But that part of it will be shifted to his area.

Tom Fulmer But do you have any plans that you can show right now?

Thelma Musick Yes, we will be building a lodge, and there will be horse back riding.

Tom Fulmer I mean in regards to a laid out plan.

Thelma Musick Laid out, we haven't mapped it out.

Tom Fulmer That's really all I need to know in regards to that. Now.

Thelma Musick Now Curtis has it where he just blocked out himself on a piece of paper, but as to have it.

Tom Fulmer At any point and time Ms. Musick have you talked to EREX in regards to this pipeline right of way that they propose across your surface property?

Thelma Musick Mr. Smallwood came to visit with me.

Tom Fulmer Was there any attempt to come to some kind of compromise?

Thelma Musick Well he had offered me a small amount of money, and he was to get back to me and he never did.

Tom Fulmer A small amount of money in regards to damages that would occur from construction of the pipeline?

Thelma Musick Just for the right to put the pipeline across.

Tom Fulmer Were they any discussion of where the pipeline should run at that time?

Thelma Musick Well my understanding it was going down the line between Curtis and me not to far from where my barn was. That was the description he gave me and off to the hollow onto Clinchfield then.

Tom Fulmer At that time did you have any objections to the placement of the pipeline?

Thelma Musick Well I'd just rather not have the pipeline on my place.

Tom Fulmer In regards to Mr. Counts' noted objection to the timeliness of the objection was submitted. Do you have your return card where as it was signed as far as the notice to you. I mean when you originally sent that in. Did you sent that by certified mail?

Thelma Musick Yes I did.

Tom Fulmer Do you have the card.

Thelma Musick I'm sure I have it at home, I don't have it with me.

Tom Fulmer There is a question of procedural on this whether this, Mr. Counts I am addressing you on this question.

Rick Counts

Yes sir.

Tom Fulmer

We have some question in our mind when the objection was actually submitted to the Post Office and whether or not we picked it up that day or the next day. And I am still exploring that situation, so I don't at this particular time, but I will within a decision render a decision on whether the objection was timely or not, once I get further information on when the actual notice, the objection was submitted to us, whether we picked it up. If it was in the Post Office and we failed to pick it up, then there is another question I will have to retain my counsel on on how I should I rule on that.

Rick Counts

Mr. Inspector I would submit to you that it is relevant with respect to when the applications was sent out the purpose of starting the clock. I would however respectfully submit that is is not relevant with regard to when the objection is mailed. 361.35.A is quite clear in stating that such objections shall be filed within 15 days, it doesn't say mailed or sent or send certified mail, it is filed. And I don't think on hand that the Post Office would serve to satisfy the requirement of being filed.

Tom Fulmer

That is duly noted. That is part of my question to my legal counsel myself, how we should handle that situation. Is there anything you would like to say in summation, or anything else you would like to add?

Thelma Musick

Well there is one thing, if we are granted a denial for this we would like to have notice before they would start work up there with considerable time.

Tom Fulmer

What do you consider considerably time?

Thelma Musick

Thirty days.

Rick Counts

Could I inquire as for the reason for the extended period of time?

Thelma Musick

Well it is for our preparation as to where we would take it from there. 20 20 has an interest in this.

Rick Counts

I'm sorry, 20 20?

Thelma Musick

Yes.

Rick Counts

Is that a news program, or?

Thelma Musick

Right.

Tom Fulmer The 30 days that you are talking about, EREX notifying you 30 days before hand?

Thelma Musick And the day it would be started.

Tom Fulmer The day it would be started?

Thelma Musick Yes. The day that they would break ground.

Tom Fulmer I don't know if I can necessarily require them to do that under the regulation they are required to notify us 48 hours prior. I most certainly require them to notify you 48 hours before they start, cause they have to notify us 48 hours prior, but I don't know if I can extend it 30 days. That is something EREX would have to agree to.

Rick Counts Mr. Fulmer we would certainly object to that. We are more than will to go above and beyond what the law requires now and that at the time we notify your office we are also willing to attempt to notify Ms. Musick, but we don't want to go through the same situation we have seen on a couple of instances here, where Ms. Musick indicates that she has been out of town or unavailable etc so that I would probably change that and indicated that we are willing to notify your office as required 48 hours in advance and if your office deemed it appropriate then certainly your people can notify Ms. Musick, but we would certainly appreciate not having that burden placed upon us so that Ms. Musick can't say she was entitled to be notified.

Tom Fulmer I can certainly understand that.

Thelma Musick If we have another hearing I would like to have just a little bit more time. I think we were given about 10 days this time, which I didn't even get my notice.

Tom Fulmer Well the 10 days are required under regulation.

Thelma Musick And we can't have more than that?

Tom Fulmer I notify you 10 days prior to.

Thelma Musick And that's it?

Tom Fulmer Yeah.

Thelma Musick Okay.

Tom Fulmer And that's all in accordance with statute and regulation, I can't change that.

Thelma Musick

I would just like to have a little more time if we should have another hearing.

Tom Fulmer

The next step in this as you may well now, pending upon whatever party may be aggrieved by the decision of the Inspector there is an appeal procedure on the informal hearing and at that time, if the appeal is timely, which would be 20 days prior to any hearing of the board. If they appeal is submitted within the specified time period then it would be put onto the board's agenda and that would be a period of time that would be allowed as far as notice to each and every party.

Rick Counts

Closing remarks please.

Tom Fulmer

Are you through Ms. Musick?

Thelma Musick

I think so.

Tom Fulmer

Okay. Go ahead Mr. Counts.

Rick Counts

Thank you Mr. Inspector. Ms. Musick has submitted a letter and Mr. Rasnake objecting to this pipeline application for BF-44. She stated that in this area there are ground breaks referring to subsidence and indicating this is potential unsafe. However in her objection she indicated obstruction of timber, obstruction to wildlife habitat and future plans for development. We would submit to the Inspector that the only one of these objections that this Department has jurisdiction over is objection number one with regards to safety. We would submit that we have put on testimony today with regard to existing operations and that we have adequately addressed the safety issue that the pipeline is going to be built and construction in accordance with Departmental regulations and we would submit that the objecting party has not met the burden of proof as a result we would request that the permit application for the BF-44 be approved by this Department, thank you sir.

Tom Fulmer

Thank you Ms. Musick. Thank you Mr. Counts. All of the testimony and any and all evidence will be taken into consideration within my decision and I will reach a decision within 10 working days. You will be mailed the decision by certified return receipt.

Thelma Musick

Will it be mailed around the 10th working day?

Tom Fulmer

Tenth working day.

Thelma Musick

I will have to watch the mail again.

Tom Fulmer

The decision will be made within 10 working days and any where between that time it will be mailed, and it may be mailed on the 10th day by certified.

Thelma Musick

Okay.

Tom Fulmer

So you can almost say it will take 15 days, well close to 20 days from today's date you will have a decision.

Thelma Musick

They gave us a new mail carrier in June and its been kinda bad. It's real bad when they give your certified mail to somebody else.

Tom Fulmer

If there is nothing other this hearing is adjourned. Thank you for coming.



O. GENE DISHNER
DIRECTOR

BYRON T. FULMER
GAS AND OIL INSPECTOR

COMMONWEALTH of VIRGINIA

Department of Mines, Minerals and Energy

Division of Gas and Oil

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Abingdon, Virginia 24210

Phone: (703) 676-5423

FAX: (703) 676-5459

November 13, 1992

Mr. Curtis Rasnake
c/o Ms. Thelma Musick
950-L-39 Hillman Highway
Abingdon, VA 24210

Dear Mr. Rasnake:

I am in receipt of a letter from Mr. Richard Counts dated November 12, 1992 requesting a continuance, to which you agreed, of Docket Number VGOB-92/10/20-0282 concerning the appeal of the granting of a permit for the BF-44, Section II pipeline.

The continuance to December 15, 1992 for VGOB-92/10-20/0282 is hereby granted.

Should you have any questions, do not hesitate to call.

Sincerely,

A handwritten signature in cursive script, appearing to read "B. T. Fulmer".

Byron T. Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

LAW OFFICE OF
RICHARD A. COUNTS

ATTORNEY AT LAW

2550 E. STONE DR., SUITE 120

KINGSPORT, TENNESSEE 37660ADMITTED IN
TN, VA

(615) 378-4099

FAX (615) 378-4097

November 12, 1991

Mr. Benny R. Wampler
Chairman
Department of Mines, Minerals & Energy
P.O. Drawer 900
Big Stone Gap, VA 24219

Re: Appeal of Thelma Musick and Curtis Rasnake
To Pipeline BF 44, Section II
VGOB-92/10/20-282

Dear Mr. Wampler:

In follow up to a telephone message to you from my staff, I write to confirm that I, on behalf of Equitable Resources would have no objection to a continuance in the above referenced matter to the December Docket occasioned by the ill health of Mr. Curtis Rasnake. I am informed that Mr. Rasnake has suffered a heart attach and that Ms. Musick requests continuance on his behalf.

Please advise at your earliest opportunity regarding the Boards' decision on this request. Should you wish to discuss this matter with me or need additional information, please do not hesitate to call. Thank you for your consideration.

Very truly yours,

Richard A. Counts / RAC
Richard A. Counts

cc: Rand E. Sterling

*Spoke w/ Pam Talbot
w/ Counts office 9:45 am on 11/13
Spoke w/ Ms. Musick
9:50 on 11/13 / d &*