

COMMONWEALTH OF PENNSYLVANIA
SENATE OF PENNSYLVANIA
ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE

PUBLIC HEARING ON COAL BED METHANE ISSUES

Before: SENATOR MARY JO WHITE, CHAIR
SENATOR RAPHAEL J. MUSTO, MINORITY CHAIR
SENATOR DONALD C. WHITE
SENATOR J. BARRY STOUT
SENATOR JOHN WOZNIAK

Date : May 22, 2007, 9:30 a.m.

Place : Room 8 E-B, Capitol Building
Harrisburg, Pennsylvania

By : Patricia M. Brown
Reporter - Notary Public

SPEAKERS:

PENNSYLVANIA FARM BUREAU
JOEL ROTZ, DIRECTOR OF STATE GOVERNMENTAL RELATIONS

PENNSYLVANIA FARMLAND PRESERVATION ASSOCIATION
BETTY REEFER

WILLIAM McCONNELL, BLAIRSVILLE, PA

BOB DAVIS, EBENSBURG, PA

PENNSYLVANIA COAL ASSOCIATION
GEORGE Ellis, president

PENNSYLVANIA OIL & GAS ASSOCIATION
INDEPENDENT OIL & GAS ASSOCIATION OF PENNSYLVANIA
STEVE RHOADS, POGAM preservation
CRAIG L. MAYER, ESQUIRE
GARY SLAGEL

1 SENATOR MARY JO WHITE: Good morning. We'll
2 call this hearing to order. This is the hearing
3 of the Senate Environmental Resources and Energy
4 Committee on coal bed methane issues.

5 The committee members who are here I believe
6 will be joined by others, but we are joined also
7 by Senator Wozniak who was one of the persons who
8 requested that we hold a hearing on this issue.

9 I'm going to not make extensive remarks
10 because it's going to be very important to try to
11 stay on our time schedule today. We are competing
12 with a number of other hearings and other
13 legislative business. I know some people are
14 going to have to be in and out of this hearing.

15 So with that, Senator Musto, did you have
16 anything?

17 SENATOR MUSTO: I have nothing.

18 SENATOR MARY JO WHITE: We will try to stay
19 right on schedule here and call the first to
20 testify, please.

21 MR. HENDERSON: Our first witnesses are Joel
22 Rotz, director of State Governmental Relations for
23 the Pennsylvania Farm Bureau, and Betty Reefer of
24 the Pennsylvania Farmland Preservation
25 Association.

1 SENATOR MARY JO WHITE: I think our plan is
2 for you each to make opening remarks in whatever
3 order you chose of about ten minutes and then
4 leave a little time for questioning by the panel.
5 Thank you.

6 MR. ROTZ: Good morning. Thank you, Madam
7 chairman and committee members.

8 Good morning. Thank you for the opportunity
9 to testify before you this morning. I am Joel
10 Rotz, director of State Governmental Relations for
11 the Pennsylvania Farm Bureau.

12 The Farm Bureau represents over forty-one
13 thousand rural and farm family members in the
14 state. The combination of rising gas prices,
15 advances in technology for drilling and extracting
16 methane gas from coal seams, and a 1983
17 Pennsylvania Supreme Court decision interpreting
18 coal rights have caused serious problems for many
19 landowners who no longer own coal rights under
20 their property.

21 The coal bed methane well situation differs
22 from what landowners normally face with the
23 location, drilling, and operation of gas wells on
24 their properties. In situations other than coal
25 bed methane, the gas well company that would like

1 to drill and operate a gas well on a particular
2 parcel of private property has no legal ownership
3 rights to that property.

4 The company must obtain the right from the
5 landowner, most often through a gas lease. The
6 company must negotiate and reach agreement with
7 the landowner on the terms and conditions of the
8 lease.

9 The landowner who is under no obligation to
10 enter into the lease has the ability to control
11 the conditions under which the company will
12 operate under the lease, including the location of
13 where wells may be drilled, what activities the
14 company may perform on the landowner's property,
15 the compensation that the company must pay the
16 landowner, and other terms and conditions that the
17 landowner is particularly concerned about.

18 With the drilling and operation of coal bed
19 methane wells, the situation is entirely
20 different. This came about as a result of the
21 1983 Pennsylvania Supreme Court decision of the
22 United States Steel Corporation versus Hoge. In
23 that case, the Court ruled that the person who
24 obtained ownership of the coal beneath the surface
25 also received ownership of the methane gas

1 contained within the coal seam.

2 Because of the Supreme Court's interpretation
3 of priority rights related to the ownership of
4 coal, current landowners of property whose coal
5 rights have been transferred can no longer claim
6 they have ownership of methane gas and coal seams.

7 As part of the property rights associated
8 with ownership of coal, coal bed methane drillers
9 have the right to reasonably use the land above
10 the seam in order to tap into the methane
11 contained in the seam. Since they already own the
12 right, methane operators do not have to enter into
13 any lease with the landowner for drilling wells.

14 Quite frankly, Pennsylvania Farm Bureau
15 believes the Court's decision in Hoge was wrong
16 and contradicts what numerous other states and
17 federal courts decided regarding coal bed methane
18 as not being a part of the property rights
19 transferred under coal agreements. It is
20 impossible for us to reasonably believe those
21 landowners who entered coal agreements decades ago
22 consciously intended to give up rights to any
23 subsurface material than coal.

24 Unfortunately, this decision has the force of
25 law for Pennsylvania and is what we must deal with

1 in trying to come up with a solution to the
2 serious problem that landowners in western
3 counties of the Commonwealth are facing.

4 Even though Hoge may have generally resolved
5 the issue of who owns the right to coal bed
6 methane with respect to the lands that are subject
7 to coal agreement, we do not believe the
8 legislature is powerless to prescribe requirements
9 in the exercise of that right in order to protect
10 health, safety, and welfare.

11 Without legislative action, landowners are
12 essentially powerless to compel the coal bed
13 methane operator to respect their needs in
14 properly managing farms, homes, and businesses.
15 As a result, landowners whose properties have been
16 subject to unrestrained methane well drilling and
17 operation have been seriously harmed in their
18 ability to manage their farms and lands and
19 maintain their water supplies and maintain
20 reasonable peace and enjoyment in their homes.

21 Pennsylvania Farm Bureau supports changes in
22 law to prohibit operators of coal bed methane
23 wells from accessing private property or
24 performing any activity related to the
25 development, construction, or operation of a well

1 on private land without the surface landowner's
2 written consent. This seems like a reasonable
3 approach to address the property rights concerns
4 of both the coal bed methane operator and the
5 surface owner.

6 It is Farm Bureau's general understanding of
7 coal mining laws that an owner of an interest in
8 mineral rights must still obtain consent of the
9 surface landowner in order to perform surface
10 activities that facilitate underground coal
11 mining. Based on that same reasoning, the mineral
12 owner's property rights are not being infringed by
13 a requirement that the owner obtain the surface
14 owner's consent on well locations.

15 The written consent would identify the
16 conditions by which the coal bed methane operator
17 is authorized to enter and drill a coal bed
18 methane well on the landowner's property. Areas
19 addressed in the written consent could include the
20 location and maintenance of wells, access roads,
21 and pipelines in order to ensure the farmer's
22 ability to utilize his own property for
23 agricultural production.

24 Wells and pipelines can block access to
25 farmers' fields, cause erosion, disrupt the

1 farmers' access to water, harbor noxious weeds,
2 create noise pollution, and destroy the appearance
3 of the landscape if not properly located and
4 maintained.

5 These are all reasonable and legitimate
6 concerns that any landowner would have and can be
7 addressed by coal bed methane operators as they
8 locate, operate, and maintain their wells without
9 infringing on operators' rights of access to the
10 methane.

11 Nothing should also prevent compensation from
12 being made to landowners for any inconvenience the
13 location of a coal bed methane well creates as a
14 component of the consent agreement.

15 It is also vitally important that an
16 agreement process be established that is timely
17 and inexpensive. Farmers should not be burdened
18 with a time-consuming and costly process in
19 reaching consent agreements. Farmers cannot be
20 expected to take time and financial resources away
21 from the farm enterprise to resolve issues that
22 offer little to the profit center of their
23 operations.

24 In summary, Pennsylvania Farm Bureau believes
25 the solution to problems created by the Hoge

1 decision is not that complicated. Coal bed
2 methane operators have a right to the property the
3 Courts have determined they own. Surface owners
4 such as farmers and other landowners have a right
5 to protect the value and productivity of their
6 property when a coal bed methane operator wishes
7 to gain entrance such as currently exists for
8 mineral owners to gain entrance.

9 Pennsylvania Farm Bureau supports the
10 preservation of both parties' interests to a
11 written consent agreement required by state law.

12 Thank you for the opportunity.

13 MS. REEFER: Good morning. I'm Betty Reefer,
14 and I'm here representing the Pennsylvania
15 Farmland Preservation Association.

16 The Pennsylvania Farmland Preservation
17 Association is a nonprofit organization whose
18 members are the conservation easement
19 professionals throughout Pennsylvania who carry
20 out the state agricultural conservation easement
21 program.

22 The conservation easement program was
23 developed in 1988 to help slow the loss of
24 farmland to non-agriculture use. The program
25 enables state, county, and local government to

1 purchase conservation easements, also called
2 development rights, from owners of quality
3 farmland.

4 No other state in the union has preserved as
5 much farmland as Pennsylvania at such a rate.
6 April 19th of this year, we marked three hundred
7 and fifty thousand acres protected in
8 Pennsylvania.

9 At a special ceremony that was held in
10 Clinton County, the state Secretary of Agriculture
11 Dennis Wolff was quoted as saying, Agriculture is
12 an integral part of Pennsylvania life; It's part
13 of our rich heritage and will play a key role in
14 our future; By preserving three hundred and fifty
15 thousand acres, we are preserving a part of our
16 history and culture for present and future
17 generations and making an investment in our future
18 economic well-being at the same time.

19 Farmland that is considered for our program
20 must meet rigorous standards to be selected. It
21 has to have prime farmland soils, strong history
22 of agriculture, and be in a location that is
23 threatened by development or conversion to another
24 use.

25 Prior to the mid 1980's, methane from coal

1 seams was classified as an uneconomic resource.
2 The exploration and development of land for coal
3 bed methane was not a common activity in
4 Pennsylvania at the time the farmland preservation
5 program was developed.

6 In the last twenty years, coal bed methane
7 has gone from obscurity as an energy resource to
8 supplying eight percent of the total U.S. natural
9 gas production. Along the way it has generated
10 controversy, and its production has affected many
11 Pennsylvania landscapes. In three years, the
12 number of state permits issued for coal bed
13 methane has jumped almost a hundred percent.

14 I also represent Westmoreland County's
15 agricultural land preservation program, and we are
16 one of those counties who has been targeted for a
17 very large increase in the number of permits
18 issued.

19 On behalf of the Pennsylvania Farmland
20 Preservation Association, we ask that you consider
21 the 1953 ruling by the Pennsylvania Supreme Court
22 which related to strip mining rights at that time.
23 But basically in that case, no landowner would
24 permit such a disablement of his land without
25 specific consideration.

1 The Commonwealth of Pennsylvania has
2 classified the ownership of coal bed methane as a
3 coal ownership. We therefore ask that you
4 consider the case of Rochez versus Duricka. In
5 Rochez, the defendants, Duricka, acquired a tract
6 of farmland that was subject to the original
7 owner's conveyance of all the underlying coal.
8 The plaintiff, Rochez Brothers, was the owner of
9 the coal beneath Duricka's farm and wished to
10 employ strip mining methods.

11 The Court observed that due to the damage of
12 strip mining methods, the landowner would not
13 casually grant this right of coal mining. The
14 Court looked at the usefulness of the surface
15 ground. Here the surface was farmland. Since the
16 agricultural use on the surface directly conflicts
17 with the nature of strip mining, the Court ruled
18 that strip mining was not intended at the time of
19 the mineral conveyance.

20 Coal bed methane extraction is in essence a
21 form of surface extraction of a deep mineral or
22 gas. At the time of the severance of the coal
23 rights on many farms, coal bed methane extraction
24 for commercial use was not employed; and it would
25 stand to reason that the mineral conveyance did

1 not anticipate this type of activity on the land.

2 The second point that we want to make from
3 the Pennsylvania Farmland Preservation Association
4 is that you recognize the agricultural land
5 preservation easement holders as a joint surface
6 owner. This would apply also to private land
7 trusts who have acquired or hold conservation
8 easements on lands throughout Pennsylvania.

9 The counties in the Commonwealth are key
10 stakeholders in the activities that occur on the
11 surface of the lands protected by an agricultural
12 conservation easement. Private land trusts in
13 Pennsylvania are playing a key role as partners in
14 the protection of our state farmland and are also
15 in our opinion joint surface owners.

16 By virtue of the deed of an agricultural
17 conservation easement, the County and the
18 Commonwealth hold title to a portion of the land.
19 Normal surface mining activities in Pennsylvania
20 require contractual consent of the landowner. We
21 urge you to recognize the benefits of instituting
22 this requirement.

23 The third point is verification of ownership.
24 It's our understanding that in some cases, many
25 cases if not all, there is no title report issued

1 to verify the ownership of mineral ownership on
2 coal bed methane operators on applications for a
3 permit to conduct methane production.

4 A title report prepared by a qualified title
5 insurance company licensed to conduct business in
6 the Commonwealth should be a requirement in the
7 permitting process. This title report would give
8 notice to the coal bed methane operator and to the
9 Department of Environmental Protection that a
10 subject farm is protected by an agriculture
11 conservation easement through the county and/or
12 the Commonwealth or a private land trust.

13 The next item is impacts to farmland by coal
14 bed methane. Many times we hear about the impact
15 being the footprint of the well head. There's
16 more of an impact to a farm than the well head.
17 The access roads, pipelines, well head site
18 construction, and other activities destroy the
19 land that has historically been farmed.

20 We request that the agricultural land
21 preservation program be involved in negotiations
22 related to well sites, access roads, and pipeline
23 right-of-ways so as to decrease the impact to
24 productive farmland.

25 The end result would be that the holders of a

1 conservation easement will be involved in
2 decisions related to location of wells, access
3 roads, and pipelines, as well as providing help in
4 monitoring for erosion and sedimentation controls
5 regardless of who owns the mineral rights.

6 On this one, I just want to point out that we
7 do have some preserved farms that are now under
8 second ownership but the original owner withheld
9 those mineral rights. There's nothing in the
10 statute that requires the sale of the farm under a
11 conservation easement to convey also the mineral
12 rights.

13 We now have some situations where the owners
14 of preserved farms do not hold the mineral rights,
15 so those farms are of particular concern to us
16 because the owner and the farm operator does not
17 have control of those mineral rights which leads
18 to our desire to be considered one of the surface
19 owners so that we can make sure that the viability
20 of that farm is protected.

21 The last item is just that we request
22 legislative support. Members of the Pennsylvania
23 Farmland Preservation Association have voted in
24 favor of legislation that will help further
25 regulate the production of coal bed methane gas on

1 farmlands that are sited with this type of
2 activity.

3 Senate Bill 61 and House Bill 414 both
4 provide new provisions that would help our farm
5 community. These bills are the beginning of
6 actions to help address the concerns that will be
7 voiced here today.

8 We cannot emphasize enough the importance of
9 preserving our farmland. And as we see less and
10 less farmland each year and more food on the
11 grocers' shelves that come from other countries,
12 the importance of protecting our agriculture is
13 intensified.

14 No other country in the world has a safer,
15 more abundant food supply than America. We must
16 do everything in our power to protect this
17 industry.

18 I thank you today for the opportunity to
19 comment.

20 SENATOR MARY JO WHITE: Thank you. Senator
21 Musto?

22 SENATOR MUSTO: Thank you, Madam Chairman.
23 Good morning.

24 Joel, in your testimony, you stated that
25 there should be changes in the law to prohibit

1 operators of coal bed methane wells from accessing
2 private properties. There are two bills that were
3 referred to, Senate Bill 61 and House Bill 414.
4 Do they address the needs or changes that you're
5 looking for?

6 MR. ROTZ: No, not entirely. Certainly both
7 of those bills take steps. Certainly the
8 Senator's bill, 441, addressing the issue that's
9 out there as far as allowing the landowner to have
10 first rights on the mineral rights if they're for
11 sale. That's a positive step.

12 But bottom line is we can't get past the fact
13 that there has to be a bottom line to the
14 negotiations where the landowner gets what he
15 needs out of the operator who wants to place a
16 well on that farm.

17 Neither of these pieces of legislation
18 specifically get us to that point. The other
19 bill, Senate Bill 61, I believe points us in that
20 direction; but it doesn't absolutely require that
21 a written consent be the final product of the
22 negotiation.

23 SENATOR MUSTO: How about during the process
24 of issuance of a permit from DEP? Is a permit
25 required from DEP to drill a well?

1 MR. ROTZ: I believe so, yes.

2 SENATOR MUSTO: I have no further questions.

3 SENATOR MARY JO WHITE: You know, I guess I'm
4 not all that familiar with the activity of coal
5 methane. I think that my perception is that it is
6 more similar to a gas well drilling operation than
7 to a strip mining operation.

8 It is not uncommon in Pennsylvania, in fact
9 it's been going on hundreds of years, that the
10 owner of the surface is not the owners of the
11 minerals. The law is rather well settled that the
12 owner of the minerals has the right to reasonable
13 use of the surface in order to extract those
14 minerals. I guess you're asking us to change that
15 hundreds of years' of law?

16 MR. ROTZ: No. I think we're fully
17 recognizing it. We're not challenging the Court.
18 We don't like the decision, but the decision is
19 there. We have to work with that. But at the
20 same time, I think the discussion comes down to
21 the reasonable access.

22 You'll hear from some gentlemen here shortly,
23 I'm sure, that will tell you some of the stories
24 of what takes place on their farm and how it
25 impacts them. We don't always view what is taking

1 place out there as being reasonable access.

2 SENATOR MARY JO WHITE: And if we were to
3 develop in the permitting system or somewhere else
4 the same type of access requirements, you know,
5 location, siting of wells, and the rest of things
6 that have traditionally been in our oil and gas
7 operations, would that satisfactory you?

8 My perception is that agriculture and oil and
9 gas production have gotten along reasonably well
10 over the years with a set of rules that everybody
11 pretty much follows.

12 MR. ROTZ: Right. If I can assume that in
13 those situations -- and I'm not entirely familiar
14 with, you know, the final product under those
15 sceneries; but if what you're saying is that those
16 scenarios do end up in a consent from the
17 landowner where everything takes place, then yes,
18 I would think that gets us to where we need to go.

19 SENATOR MARY JO WHITE: That may be what we
20 need to look at. Senator White?

21 SENATOR DONALD WHITE: Thank you, Madam
22 Chairman. We as the general assembly are in a
23 very difficult situation in terms of being asked
24 to fiddle around with a Supreme Court decision. I
25 keep going back to the same question. Has there

1 ever been any consideration to legal challenges of
2 that '83 ruling?

3 MR. ROTZ: I have, of course, no legal
4 background. I'll state that right up front. My
5 understanding through my legal counsel is that
6 there is no attempt I guess at least in the
7 foreseeable future, and nothing that is happened
8 in the recent past that I'm aware of. So I guess
9 the answer is no, I don't see any activities along
10 those lines.

11 SENATOR DONALD WHITE: That seems to be the
12 response that I get every time I talk to anybody
13 who's activity involved in this issue. I question
14 the sincerity. I don't know what they expect us
15 to do when we're infringing upon, potentially
16 infringing upon this ruling. This is a very hot
17 issue in the district I represent.

18 MR. ROTZ: Yes.

19 SENATOR DONALD WHITE: We have some
20 out-of-state drillers that were absolutely coming
21 on and abusing the properties to which they were
22 permitted to have access to. I have met with them
23 on several occasions. They no longer as far as I
24 know conduct business in my area.

25 We've also met with the people from

1 Consolidated Coal. Consolidated Coal inherited
2 CNX. They're tremendously cooperative. As far as
3 I know, we have not had one compliant from any
4 landowner in regard to their operations. Now, I
5 know there are other people out there.

6 But I still go back to the original. I don't
7 know why the legal challenges haven't been -- why
8 you expect us to overturn the Supreme Court
9 decision.

10 MR. ROTZ: Well, I would just say in response
11 to that, I don't believe as the Farm Bureau we're
12 asking you to overturn the Court's decision.

13 We understand you're in a tough position.
14 You can't be in a position of taking the private
15 property of the coal bed methane operators. We
16 fully recognize and understand that. But we don't
17 see where that prohibits you from forcing them to
18 the table with the surface owner so that
19 everybody's property rights can be equally
20 considered when they're going to extract the coal.

21 SENATOR DONALD WHITE: And in a perfect
22 world, that would happen. And I think the
23 operators in the district that I represent for the
24 most part are doing that, and I understand.

25 MR. ROTZ: I agree there are good operators

1 out there where the landowners have no complaints,
2 absolutely.

3 SENATOR DONALD WHITE: Thank you.

4 SENATOR MARY JO WHITE: Senator Stout?

5 SENATOR STOUT: No questions at this time,
6 Madam Chairman.

7 SENATOR MARY JO WHITE: Senator Wozniak?

8 SENATOR WOZNIAK: Thank you, Madam Chairman.
9 First I want to thank you for having this hearing.

10 I don't think anybody disputes the fact that
11 coal bed methane is owned by others than the
12 surface operators. But now with the price of oil,
13 price of gas, the use of methane, it used to be
14 vented, it used to be burned off, used to be a
15 dangerous situation in coal mines, now becoming a
16 product that is very valuable.

17 What I would ask you to do -- and a number of
18 years ago, we had a hearing in Senator White's
19 district because it raised its ugly head there;
20 and now as you can see, it's in Indiana and
21 Westmoreland and now Cambria County.

22 What we have, we have good actors and we have
23 bad actors. We have some fine operators who come
24 in and negotiate with the surface operators and
25 strike a deal. I guess it was Lyndon Johnson that

1 said, Come, let us reason together.

2 They know that they were going on the plan.
3 They were utilizing the drilling well, and they
4 have their pipelines or the access roads. But
5 they worked something out with the surface
6 operators.

7 At the same token, we had other operators
8 that came in and said, The law says I have access
9 to your surface land to get to my property and
10 that's the way it's going to be.

11 Could you work out some language? Now, the
12 bill that I have, and I talked with the coal
13 association, this is just a product to get us to
14 this hearing; and hopefully it will be an
15 evolution. Can you work on language that you
16 think would be acceptable to the surface owners
17 and to those people that own the mineral rights
18 underground?

19 I'm thinking more or less -- I have some
20 acreage down in Somerset. I never called the guy
21 back, but he was researching for natural gas.
22 With that, they have to get permission from me to
23 go on the land and make a deal. If they find any
24 gas, I get a piece of the action.

25 Could you work on some language that does

1 something similar to what the natural gas does?
2 Obviously I'll ask the coal operators and the
3 people in methane for language and merge those.
4 Send it to me, and we'll try to merge those things
5 together and find some semblance of compromise out
6 there.

7 I think one of the problems we have is right
8 of first refusal. On the plat, I own title to
9 this land; and it's registered somewhere in the
10 courthouse. But trying to find what's here and
11 what's here is a completely different document.
12 Trying to overlap that is probably going to be
13 extremely difficult for government and expensive
14 for the individual.

15 Could you find language that you think can
16 direct that problem and stay within the realm of a
17 springboard? I think Senator White is right, both
18 of them. You have to change everything to spring
19 forward. But if we could find someplace where we
20 can reasonably sit down and shake hands and say
21 fair enough, that's what I'm trying to do.

22 If you find the language that you think is
23 fair, give it to me. I'm going to ask each other
24 organization to do the same thing and maybe merge
25 those together, come up with something everybody

1 agrees with.

2 Thank you, Madam Chairman.

3 MR. ROTZ: I can tell you we'd be happy to
4 make that attempt.

5 SENATOR WOZNIAK: Thank you.

6 SENATOR MARY JO WHITE: Any other questions?
7 Thank you. Thank you for giving us a lot of
8 information within your time slot. That was very
9 well done. Thanks.

10 MR. HENDERSON: Our next witnesses are
11 William McConnell and Bob Davis.

12 SENATOR MARY JO WHITE: Good morning,
13 gentlemen. You can proceed in whatever order
14 you'd like.

15 MR. McCONNELL: Good morning, and thank you
16 for having this hearing. My name is Bill
17 McConnell. I'm from southern Indiana County. I
18 have a farm with coal bed methane wells on it.

19 In our economics classes, we're taught that
20 agriculture and mining are the cornerstones of all
21 productive economies. Agriculture gives us our
22 shelter, clothing, food, and even the table upon
23 which the food is served. Mining, including gas
24 and oil production, provides our utilities,
25 plumbing, transportation, infrastructure, and

1 other amenities which define our societal
2 prosperity.

3 Our engineers fashion the minerals dug from
4 the ground into shapes and sizes which are useful
5 for each of us to conveniently access and consume
6 the fruits of our fields and farms. By
7 administering the distribution system, our
8 managers, supervisors, clerks, and sales people
9 enhance the ease and comfort of our lives, lives
10 lived in relative contentment because of the rock
11 solid economic cornerstones of agriculture and
12 mining.

13 Pennsylvania earned its nickname, the
14 Keystone State, in a nation abounding with
15 productivity and individual ambition because this
16 Commonwealth has employed its abundant
17 agricultural and mineral resources to benefit its
18 own citizens as well as the rest of the nation.

19 That keystone is held firmly in place at the
20 apex of the arch because the cornerstones which
21 hold it high are equally strong and equally
22 stable. Both agriculture and mining must remain
23 equally strong and equally stable for the keystone
24 to remain in place.

25 What happens when we chip away at one of

1 these cornerstones? What happens if we undermine
2 one pillar and use that ore to prop up the other?
3 Does that imbalance make the keystone arch more
4 stable or less? Will aiding Pennsylvania's mining
5 industry while weakening our agricultural industry
6 ultimately strengthen or weaken this
7 Commonwealth's economy? I submit that it will
8 weaken it. As the matter relates to coal bed
9 methane development, Pennsylvania's mining
10 industry benefits while its farmers are asked to
11 bear a heavy burden.

12 I have a three hundred eighty-five acre farm
13 in southern Indiana County. I own my gas, but the
14 underlying coal was sold in 1903. In 2003, my
15 farm became host to seven coal bed methane wells
16 and over twenty thousand linear feet, that's
17 nearly five miles, of access roads and pipelines.

18 Four years later, the access roads are eroded
19 eyesores, alternating between mosquito harboring
20 puddles and dusty expanses. My pond is filling
21 with runoff from the erosion of these roads and
22 pipelines. My pastures are likewise impaired.
23 The draining in my fields has been altered with
24 pools of water appearing after each rain storm.
25 The lane to my house is rutted and potholed by

1 heavy truck traffic and daily visits by well
2 tenders.

3 As a necessity to access the wells, gates
4 have been installed where I don't want them; and
5 these gates are often left open either by well
6 tenders or by other parties who upon seeing any
7 gate must instinctively stop, open it, and leave
8 it open.

9 Whether I am constructing fences or buildings
10 or planting and harvesting crops or contouring
11 fields or laying drainage or driving upon my lane,
12 my life seems blighted by coal bed methane wells
13 and their incumbent development. Day and night,
14 the clanking of well heads and the chugging of
15 engines destroy the quiet enjoyment of my
16 property.

17 CBM development has also injured any future
18 hope I might have for developing a property or
19 even providing suitable home sites for my
20 children, should they decide to chance living so
21 close to their parents.

22 My property value is diminished, and the
23 prospects for the future are darkened, due to CBM.
24 In short, coal bed methane development, though a
25 boon to the mining industry, is a bust to the

1 farmers and landowners in Pennsylvania.

2 In southern Indiana County, we host about a
3 hundred fifty coal bed methane wells. That is one
4 for every seventy or so acres, with expanded
5 development ongoing.

6 Westmoreland County has about thirty wells;
7 and according to newspaper reports, it's slated to
8 get about two hundred fifty more over the next two
9 years.

10 Development has begun in a big way in Cambria
11 County. Also Fayette, Greene, and Washington
12 Counties have substantial and increasing coal bed
13 methane field construction.

14 This is not an isolated issue. Coal bed
15 methane development will eventually impact every
16 part of Pennsylvania where coal is found. Every
17 form of development impacts the land, and every
18 form of development faces its naysayers and knee
19 jerk condemnation.

20 Both agriculture and mining must continually
21 fight battles against those who make an industry
22 of complaint and who claim they would rather the
23 world did not change while they quietly bask in
24 the advantages brought on by that change.

25 But the complaints of Pennsylvania's farmers

1 and landowners are not trivial. They are real,
2 and they need to be resolved.

3 The situation is out of balance. Due to an
4 inequality in the law, CBM development forges
5 ahead while farmers and landowners are forced to
6 suffer. From reduced property values and lower
7 farm productivity to weakened pride of ownership,
8 and erosion of confidence in our governing bodies,
9 coal bed methane development poses a threat to
10 agriculture.

11 Let us quickly correct this imbalance.
12 Instead of alienating agriculture to benefit
13 mining, let us ally agriculture and mining to
14 benefit the whole state.

15 The solution is simple. It is already in
16 place within the surface coal mining industry of
17 Pennsylvania. It is called contractual consent by
18 which the coal owner is required to obtain
19 permission of the landowner before mining coal.

20 Contractual consent was the outcome of a 1953
21 Pennsylvania Supreme Court decision known as
22 Rochez versus Duricka in which coal owners who
23 wanted to extract coal by surface mining were
24 first required to obtain permission from the
25 landowner.

1 These requirements were incorporated in the
2 Pennsylvania Code, Title 25, Section 86.64, titled
3 Right of Entry. This provision required the coal
4 developers obtain a signed contractual consent of
5 landowner before mining.

6 Since 1980 when contractual consent became
7 law in Pennsylvania, surface mining has gone on
8 unabated. Landowners have been able to sit down
9 with coal companies and work out agreements to the
10 satisfaction of both parties. There is no reason
11 to believe that landowners will be less amenable
12 to negotiating a consent agreement with the CBM
13 developer than with the strip mine operator.

14 Contractual consent has environmental
15 benefits as well. Farmers are the stewards of the
16 land, and no one is better suited to know what is
17 the right and proper use for that land.

18 As an example, a CBM developer seeking the
19 shortest route for a pipeline might prefer to dig
20 up a farmer's best field rather than going around
21 it. The farmer would have a more accurate
22 estimation of the damage to his livelihood than
23 would the CBM developer. Let the farmer decide.

24 What would happen if a headstrong landowner
25 refused entry to a CBM developer? Most farms in

1 Pennsylvania are relatively small, one hundred
2 thirty acres on the average. The developer could
3 move on; or by using techniques of horizontal or
4 slant drilling, the coal under such properties
5 could be accessed from a nearby property where the
6 landowner may be happy to negotiate a consent
7 contract with the developer.

8 Some have argued that a special board of
9 arbitration should decide where wells, access
10 roads, and pipelines are located and how much the
11 landowner should be paid for the land. This
12 recommendation ultimately denies the farmers'
13 authority to negotiate. Without the authority to
14 refuse entry, a farmer or landowner has no real
15 determination in the disposition of his or her
16 property. A non-negotiated agreement is, by its
17 nature, no agreement at all. It is an ultimatum.

18 We entrust our farmers with the daily
19 decisions which ultimately feed the hungry world.
20 Let us not deny their judgment on CBM.

21 Others say the damage to the surface is less
22 drastic in CBM development than in strip mining
23 correspondingly and the landowner's control in
24 this situation should be reduced. In terms of
25 compensation, the landowner's demands should be in

1 keeping with the damage that CBM development
2 causes.

3 Again, farmers as a group are reasonable
4 folks. Certainly where the negative impact of the
5 development is reduced, the compensation to the
6 farmer should be less. But the fairness and
7 authority by which that compensation is calculated
8 should not be reduced.

9 Another argument says the contractual
10 consent has hurt the mining industry and therefore
11 should not be extended to CBM or it would cause
12 the same sort of damage. If it is true that
13 contractual consent has hurt the mining industry,
14 then why hasn't the legislature repealed the law?
15 Contractual consent serves to strike a much
16 needed balance between the rights and needs of the
17 farmer and the potential harm caused by mining.

18 We have had more than a quarter century of
19 contractual consent on surface mining; and during
20 that time, mining has continued, the health of our
21 fields and forests and streams has improved, and
22 farmers have shared in both the cost as well as
23 the benefits of surface mining. As a consequence,
24 Pennsylvania has seen no need to amend or repeal
25 the standing contractual consent law.

1 While it may seem politically safer to
2 endorse the status quo and do nothing, legislative
3 activity on the CBM issue will ultimately,
4 inactivity I should say on the CBM issue
5 ultimately will result in lost revenue, lost jobs,
6 lost business potential, and future dependence on
7 imported energy.

8 Legal disputes will bog down our courts, and
9 every proposed well will become a new source of
10 landowner resentment towards CBM developers and
11 those who take their side in that issue. In the
12 meantime, other states will leap ahead and reap
13 the benefits of the ready and cheap CBM resource.

14 As Antonette Markowski of the Department of
15 Conservation and Natural Resources points out in
16 her exhaustively researched book on coal bed
17 methane, in Pennsylvania unresolved ownership
18 questions coupled with multiple land situations
19 have hindered the commercial development of CBM.

20 Since 1999 when that statement was first
21 written, nothing has changed. Let us acknowledge
22 the accuracy in Ms. Markowski's statement and move
23 to make the changes that will give stability and
24 fairness to both industries impacted by CBM
25 development.

1 Legislative inactivity poses a barrier to a
2 better future for Pennsylvania. In his testimony
3 on CBM development to the Joint Legislative Air
4 and Water Pollution Control and Conservation
5 Committee in Blairsville, Indiana County, on
6 February 28, 2003, mineral law expert from the
7 University of Pittsburgh, Dr. Cyril Fox, stated,
8 This is a legislative rather than a judicial
9 question, It needs and should promptly receive the
10 interposition of the legislative authority.

11 Twenty-four years after the Hoge decision was
12 decided, we're still trying to resolve issues
13 surrounding that court decision. If we wait for
14 the courts to clarify this issue, we will wait
15 indefinitely.

16 The outcome of court decisions are always
17 uncertain. They depend upon the specific nature
18 of each case. They are time consuming; and they
19 place an economic burden upon parties involved,
20 who in the case of our farmers may or may not have
21 the financial wherewithal to see the case through.
22 Because of these obstacles, Dr. Fox recommended
23 legislative rather than judicial action.

24 Now it is May 2007. Isn't it time to heed
25 the advice of experts like Ms. Markowski and Dr.

1 Fox? Farmers and landowners of Pennsylvania urge
2 the legislature to enact a law which requires CBM
3 developers to obtain the consent of the landowner
4 prior to entering upon private property.

5 When farmers and landowners once again
6 control the fate of their properties, they will
7 most assuredly welcome CBM development. The
8 economic benefits will accrue to farmers and
9 developers alike.

10 I urge Pennsylvania's legislators to restore
11 the balance between the two most important
12 industries in the Commonwealth. Protect our
13 farmers while promoting the mining industry's CBM
14 development. Thank you.

15 MR. HENDERSON: Mr. Davis?

16 MR. DAVIS: Members of the committee, my name
17 is Bob Davis. I'm a farmer from Cambria Township,
18 Cambria County. I'd like to comment on the ways
19 that coal bed methane drilling affects landowners
20 and lessees of farmland as well as the impact of
21 drilling on preserved farms.

22 In my area of Cambria County, the mineral
23 rights that coal bed methane drillers are using to
24 acquire ownership in the methane are often bought
25 at tax sales, often for minimal costs. I'd like

1 to see legislation passed requiring the
2 notification of surface owners prior to the sale
3 of mineral rights. I believe the surface owner
4 should have the right to purchase these minerals.

5 The State of Indiana addressed this problem
6 by passing the Dormant Mineral Interests Act. This
7 act provides that a severed mineral interest that
8 is not used for a period of twenty years
9 automatically reverts to the current surface
10 owner.

11 As a landowner and lessee of farmland, I
12 believe the coal bed methane drillers should be
13 required to obtain permission from the surface
14 owner and any other person who has an interest in
15 the property, including another farmer leasing
16 this property. This should include the right of
17 refusal.

18 When the mineral rights were severed, coal
19 bed methane was not considered in the sale of
20 these mineral rights. Most of these sales don't
21 include the surface rights.

22 If a strip miner acquired these mineral
23 rights at a tax sale, he would be required to
24 obtain permission from the landowner before
25 accessing the property. I believe methane

1 drillers should be held to the same standard.

2 As a member of the Cambria County
3 Agricultural and Land Preservation Program board
4 of directors, I have concerns on the effect of
5 methane drilling on preserved farms.

6 Our board asked the Pennsylvania Department
7 of Agriculture to clarify this issue. They stated
8 that drilling would be allowable on a preserved
9 farm but processing the gas would not be
10 permitted. If the gas was processed on a
11 preserved farm, the deed of easement would be
12 violated.

13 My concern is that if the surface owner
14 cannot refuse access to the drillers, how can he
15 be penalized for the actions of the drillers?
16 Also, the impact on the surface of all farmland
17 should be minimal and restoration should be
18 completed.

19 Many times this land is preserved to insure
20 that it will remain productive agricultural land.
21 Steps need to be taken to protect the investment
22 the Commonwealth has made in these properties
23 before they are impacted negatively.

24 Pennsylvania leads the nation in farmland
25 preservation, and the commitment landowners have

1 made to this program should provide further
2 protection from encroachment from coal bed methane
3 drillers.

4 Furthermore, coal bed methane drillers should
5 be required to prove ownership of the mineral
6 rights. The Department of Environmental
7 Protection should require this action and provide
8 that information to the surface owners when a
9 permit is applied for. This information includes
10 title report and any other documents concerning
11 the property.

12 Because these rights were severed many years
13 ago and the different seams of coal can have
14 different owners, it can be difficult to verify
15 ownership. Therefore DEP should require that
16 drillers prove ownership of the seams of coal that
17 they intend to drill through. This should be made
18 available to the surface owner as well.

19 When drilling is completed and the gas is
20 being extracted, DEP should require and provide to
21 the surface owner proof that the gas is coming
22 from the coal seams and only the coal seams.

23 The ownership of coal bed methane in
24 Pennsylvania was determined by the 1983 Hoge
25 decisions. Other states, including North and

1 South Dakota, Illinois, and Indiana, rejected the
2 Hoge case and have followed the U.S. Supreme Court
3 ruling that decided that the owner of the gas
4 rights is also the owner of the coal bed methane.

5 Any company drilling for methane in these
6 states must have an agreement with the surface
7 owner and pay for damages to the land and crops.
8 In Pennsylvania, drillers are not required to pay
9 the surface owner for any damages that occur, and
10 many landowners have suffered thousands of dollars
11 of damage with little or no compensation.

12 With the value of farmland rapidly rising,
13 the loss of the use of this farmland that is used
14 by methane drillers puts farmers in an economic
15 disadvantage. The farmer loses the use of
16 approximately one to two acres for every well.
17 This includes well site, access roads, and
18 pipelines.

19 That property's value would be greatly
20 reduced by the presence of methane wells. Who
21 would pay top dollar for property with methane
22 wells that return no income but cause noise,
23 erosion of roads, and well sites?

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

1 remove up to four thousand gallons of water daily
2 per well, depleting the water supplies can
3 negatively affect farmers. Most farmers use wells
4 or springs to supply water for household use and
5 to water livestock. Farmers have concerns
6 regarding both the quality and quantity of the
7 water supply.

8 The testing of water and guarantee of the
9 water quality and quantity as a water supply
10 should be required for the life of the well. This
11 testing should be the responsibility of the
12 drillers and not the landowner, and the result of
13 any test should be shared with DEP and the surface
14 owner.

15 In conclusion, agriculture is Pennsylvania's
16 leading industry; and steps must be taken to
17 protect landowners from the encroachment of coal
18 bed methane drilling operations. The economic
19 damage of drilling operations on Pennsylvania
20 farms is staggering. This would include the loss
21 of valuable acreage to well sites, access roads,
22 and pipelines. Landowners must be compensated for
23 these losses.

24 The landowner must have the right of refusal
25 and the right to restrict entry onto his property.

1 Any property that is enrolled in the farmland
2 preservation program should be given additional
3 protection reflecting the landowner's commitment
4 to agriculture.

5 Before mineral rights are sold, the surface
6 owner should be notified and be given the first
7 chance to purchase these rights. Also, a dormant
8 mineral rights act should be considered.

9 Please take into close consideration the fact
10 that when coal rights were severed many years ago,
11 the drilling of coal bed methane was not intended
12 by either the buyer or the seller of the mineral
13 rights.

14 It was a Pennsylvania Supreme Court ruling
15 that created this problem for the landowners, and
16 hopefully legislation can be passed to address
17 these problems and find a fair solution for
18 Pennsylvania's farmers.

19 Thank you very much for your time and
20 consideration.

21 SENATOR MARY JO WHITE: Thank you. Senator
22 Musto has been called away. Senator Wozniak?

23 SENATOR WOZNIAK: Thank you, Madam Chairman.
24 Thank you for testifying. Mr. McConnell, can you
25 walk me through when the methane drillers came?

1 Can you walk me through the process of what
2 happened to you?

3 MR. McCONNELL: I got a letter stating that
4 they were going to come on the property. The
5 situation was not unfamiliar to me because my
6 uncle had confronted the same thing on his farm a
7 few miles from mine about five years earlier. So
8 I knew that my uncle had fought it and researched
9 the legal issues involving the development of his
10 property.

11 And basically from that point, the developers
12 moved in, bulldozing and so forth. In general,
13 the company that developed the seven wells on my
14 property was -- they did a sloppy job. They were
15 not sensitive to my concerns. They're gone.
16 However, I still have devalued farm and, you know,
17 seven wells and constantly people on my property
18 that I would rather they weren't there.

19 SENATOR WOZNIAK: What kind of compensation
20 did you receive from these people?

21 MR. McCONNELL: They have paid \$1,000 per
22 well site and a dollar fifty per linear foot for
23 rights-of-way.

24 SENATOR WOZNIAK: When you balanced it out
25 with the loss of production of your farm and maybe

1 loss of value of it, where are the blind eyes of
2 justice that come down and balance it out?

3 MR. McCONNELL: No way you can come close to
4 compensating for the damage to my property and
5 impairment of my future on the property. There
6 are wells that have to be worked around. There is
7 intangibles such as just being able to walk out my
8 front door and not have the clanking, banging
9 sounds of wells, which four years ago it was a
10 quiet, peaceful place. Now it's a noisy place.

11 The value that my farm has been reduced is in
12 no way compensated for by the unnegotiated
13 payments that they basically said, You take it or
14 leave it, It's our decision.

15 Now, there are areas around the country where
16 the law is similar to Pennsylvania, such as in
17 Alabama where the coal owner also owns the gas.
18 In Alabama it's standard practice to negotiate an
19 entry fee with the landowner, even though their
20 Alabama law was modeled on the Pennsylvania Hoge
21 decision. Since then, almost every state has gone
22 the opposite direction after the U.S. Supreme
23 Court decision.

24 SENATOR WOZNIAK: So Alabama is more
25 civilized than we are, you're saying?

1 MR. McCONNELL: At this point it seems that
2 way, yes.

3 SENATOR WOZNIAK: As we move forward with the
4 process, trying to incorporate you have to be made
5 whole, do no harm, that type of thing, any erosion
6 issues have to be dealt with by the driller. I'm
7 trying to make things as good as we can because we
8 still have the Hoge issue and they have the right
9 to that well.

10 MR. McCONNELL: The Hoge issue isn't really
11 even the issue at this point. The Hoge issue is
12 the legal decision which granted ownership of the
13 gas to the coal mine.

14 SENATOR WOZNIAK: The access to the property.

15 MR. McCONNELL: It's the access. So the
16 instrument, the legal instrument that the coal
17 owner has to come onto my property is a coal deed
18 which says that they may do the various things
19 associated with coal mining on my property.

20 It doesn't say that they are entitled to lay
21 gas pipelines to capture gas and commercially use
22 that. There is nothing in the coal deed which
23 says they are legally entitled to capture gas on
24 my property. They're allowed to vent gas.
25 There's nothing that says that they are allowed to

1 lay pipelines and capture gas commercially.

2 The Hoge issue isn't really the issue here.
3 The issue is just that the landowners are being
4 beat up, and there's no denying the fact that my
5 property is substantially less valuable with seven
6 noisy gas wells on it than it was before this
7 happened.

8 You know, I just think that there would be a
9 reasonable way for this to be handled that I would
10 determine what is the value of that damage.

11 SENATOR WOZNIAK: And Cambria County is the
12 reason I'm here. When it happened in Indiana
13 County, it wasn't my problem, so I didn't really
14 care. But now it's under my watch and in my
15 county. And as energy and this methane becomes
16 much more valuable, this is going to be an
17 increasing issue.

18 I'm going to ask you, would it be okay to
19 work through the Farm Bureau to work on language
20 and use them as the point people? You're going to
21 have a hundred farmers out there. You need
22 somebody to sit down and talk with and have them
23 negotiate with the coal association on those type
24 of things.

25 MR. DAVIS: One thing about the gas wells,

1 these are not the gas wells you see, just tanks
2 sitting in a field. They put that horse head pump
3 on it. It runs either by gas or electric; and it
4 runs twenty-four hours a day, seven days a week.

5 SENATOR WOZNIAK: I had a natural gas up in
6 Phillipsburg way that made a lot of noise.
7 Actually, the owner of the gas well worked with
8 the owner of the property, put mufflers on it,
9 turned it, put it in a little box, and actually
10 satisfied the neighbor who it wasn't even his
11 land. That's a different issue. There's things
12 they can do to make them quieter and less
13 invasive.

14 I need to narrow down who I need to talk to
15 to work on language. I don't want to talk to a
16 hundred different farmers and property owners. We
17 need to narrow it down so we can come to some --
18 make our sisters kiss or something like that. Not
19 everybody will be happy, but we have to move stuff
20 from here to somewhere over here. I was just
21 asking if working with the Farm Bureau is okay
22 with you guys.

23 MR. DAVIS: Fine.

24 SENATOR WOZNIAK: Thank you.

25 SENATOR MARY JO WHITE: Senator White?

1 SENATOR DONALD WHITE: Thank you, Madam
2 Chairman.

3 This issue, as I said before, businesses,
4 professional businesses, I have found with a
5 little cajoling and power of the office sometimes
6 have been fairly cooperative with me. Obviously,
7 Mr. McConnell, is it the company I was referring
8 to, the out-of-state company that was on your
9 property, the drilling company?

10 MR. McCONNELL: Yes.

11 SENATOR DONALD WHITE: I'm concerned. Is the
12 overriding concern, because I have been told that
13 it's not so much the -- it's all part of the
14 package. But there's also a concern about the
15 ownership. I mean, are you conceding the
16 ownership of the methane gas?

17 MR. McCONNELL: Absolutely. That's never
18 quite been the issue here.

19 SENATOR DONALD WHITE: But there had been
20 talk, at least back in my district, I believe you
21 were the center of discussion on, with regard to
22 royalties. Those terms were used.

23 MR. McCONNELL: Royalties is a different
24 issue. Royalties has been brought up as sort of a
25 bugaboo in that matter where royalty is not

1 necessarily an unreasonable way to address this
2 issue. It's to the advantage of the gas well
3 driller to pay a royalty. They don't know what
4 the --

5 SENATOR DONALD WHITE: In lieu of damages?

6 MR. McCONNELL: Well, if they're going to be
7 paying some sort of compensation to the landowner
8 based upon drilling a well, if they make it a flat
9 fee that they're going to pay and then the well is
10 not productive, then it's the driller that has to
11 suffer.

12 It's to the benefit of the driller. If
13 they're going to pay some of compensation, then it
14 would be royalties because that's relative to the
15 production of the well. That's the only reason
16 royalties is ever brought up from me.

17 You know, it's relative to the production of
18 the well. That would be to the benefit of the
19 developer. It's not an unreasonable way for a
20 developer to compensate the landowner.

21 SENATOR DONALD WHITE: This was a very
22 difficult issue for me initially because I didn't
23 understand it either. Can I ask you a question?
24 Do you have regular natural gas? Do you own a
25 natural gas well on your property?

1 MR. McCONNELL: Yes.

2 SENATOR DONALD WHITE: How many of those do
3 you have?

4 MR. McCONNELL: Seven. I have seven of both.

5 SENATOR DONALD WHITE: Seven of both?

6 MR. McCONNELL: Yes

7 SENATOR DONALD WHITE: And you get an
8 override --

9 MR. McCONNELL: I get a royalty from the
10 natural gas that I own.

11 SENATOR DONALD WHITE: One eighty?

12 MR. McCONNELL: Yes.

13 SENATOR WOZNIAK: That's a prettier sound on
14 that one.

15 MR. McCONNELL: There's no sound at all.

16 SENATOR DONALD WHITE: So you have fourteen
17 wells on your property?

18 MR. McCONNELL: Yes.

19 SENATOR DONALD WHITE: So the seven natural
20 gas wells are very pristine and everything's fine
21 with access? Because they need access too, don't
22 they?

23 MR. McCONNELL: Yes, they do. And they
24 enhanced the value of my property. I get free gas
25 to my house. That's definitely an advantage. I

1 have royalty checks coming in from that. That
2 adds to my income. That adds to the value of my
3 property. That adds to the tax base of our
4 region.

5 When instead you have coal bed methane wells
6 to which or from which no revenue is generated,
7 they are a liability to my property and they are a
8 liability to the region. That money goes
9 elsewhere. There is nothing from that outside of
10 the jobs that are created and so forth. There's
11 no revenue generated to the local economic from
12 those wells. If there was fair payment and fair
13 compensation,

14 I mean, it would seem to me that fair
15 compensation would be to pay the taxes on the
16 property or some amount relative to that because
17 my property is devalued. It is not as desirable
18 of a property now as it was before those wells
19 were put in.

20 SENATOR DONALD WHITE: I'm thinking right now
21 aesthetically. I own some gas wells on some
22 property I have in Indiana County. It's a big
23 green tank. It's not very pretty. Every so many
24 hours, it sounds like a train coming through
25 whenever it hisses and releases the water

1 pressure. So aesthetically, I don't think it's
2 any addition to my property. Now admittedly, I
3 certainly enjoy the royalties.

4 MR. McCONNELL: Makes that eyesore a little
5 more --

6 SENATOR DONALD WHITE: Right, more tolerable.
7 I still don't think it's aesthetically -- you
8 know, the issue has always been also one of
9 liability. In other words, when we start talking
10 about the ownership of this mineral, the Hoge
11 decision whether we like it or not is still with
12 us.

13 If the ownership of the CBM was transferred
14 to the owner of the regular gas rights -- because
15 that's always been a problem differentiating.
16 Talking to any group of farmers, gas is gas.
17 That's been the part of the -- when you get into
18 the explanation, it's very difficult for them to
19 understand. And I agree with them about the
20 separation of ownership.

21 But let's say the ownership of the gas was
22 transferred to the gas, natural gas owner, because
23 gas is gas. Would that mean that the owner then
24 is liable for this gas, this resource? Or if
25 there's an economic advantage there, they would be

1 liable also for a portion of the venting the gas?
2 Or if the owner, if it's some day mined, would
3 they have any liability there do you think?

4 MR. McCONNELL: Actually, we've had legal
5 advice on this. And no. If you have coal mining
6 going on under your property and there's an
7 accident in that mine, the surface owner is not at
8 risk. Now, I'm not an attorney, though we have
9 had legal advice on this.

10 It goes on all the time in the state of
11 Pennsylvania where there are accidents related to
12 gas and coal mining, gas drilling and coal mining;
13 and the landowner is not liable for those.
14 Beverly Gossert is the one who did the research.
15 I believe you know Beverly.

16 SENATOR DONALD WHITE: Yes, I know Beverly
17 very well. So in other words, any transfer of the
18 gas rights would not only shift the royalties and
19 benefits but you don't think would also shift the
20 liability?

21 MR. McCONNELL: No. It's very clear. Again,
22 Senator, we're not looking to change the ownership
23 of the gas rights. The only thing that we're
24 asking for is the same consideration on coal bed
25 methane development that the state offers to

1 landowners on surface mining. It's already law in
2 Pennsylvania.

3 SENATOR DONALD WHITE: I give credit to
4 Senator Wozniak. He's made some good arguments.
5 I mean, he understands the balance that needs to
6 be there. I think there needs to be a meeting of
7 the minds. Like I said, I have met with a lot of
8 my operators in the district and have read them
9 the riot act as to how I expect them to treat
10 citizens.

11 MR. McCONNELL: It's been appreciated.

12 SENATOR DONALD WHITE: It has quieted down
13 back home, I think you have to admit, at least in
14 our area for now. But once again, there is no
15 legal recourse, so I think that needs to be
16 developed.

17 But I do get concerned when the farmers that
18 I've talked to don't understand the ownership
19 issue talk about royalties. I think that's a
20 different issue.

21 MR. McCONNELL: Needless to say, the
22 ownership issue is a complicated issue. Even the
23 U.S. Supreme Court ruled the exact opposite of the
24 Pennsylvania Supreme Court. Right now,
25 Pennsylvania is agreeing with the dissenting vote

1 of the U.S. Supreme Court, the Amoco versus
2 Southern Ute, which gave the ownership of the gas
3 to the gas owner. That was a seven to one ruling
4 with only Ruth Bader Ginsburg dissenting. So
5 right now, the State of Pennsylvania is agreeing
6 with Ruth Bader Ginsburg and the dissent on that
7 issue.

8 I just would think that at this point, it
9 needs to be acknowledged that that's a problem.
10 We're looking for a way to skirt the problem and
11 correct it.

12 I just think that the contractual consent
13 which is already used in that state on a similar
14 issue would be a good resolution. I think that's
15 why the Farm Bureau; John Belder, their legal
16 counsel; and also other representatives from the
17 Farm Bureau have been down to our area and looked
18 at the wells and so forth. And when they saw the
19 amount of damage and change that's made to the
20 property and the damage that it does to the land
21 property and value in general, that they saw that
22 the reasonable way to handle this is contractual
23 consent.

24 SENATOR DONALD WHITE: Now, on your property,
25 again, on the seven CBM wells, once they come in,

1 they paid you the thousand dollars per well and X
2 amount of dollars per linear foot and they still
3 come on your property and check these wells,
4 maintain these wells, they have done nothing to
5 restore?

6 MR. McCONNELL: I had Joe Diamond from the
7 Farm Bureau down two weeks ago. He couldn't get
8 over it. You know, I don't have time to police
9 the twenty thousand linear feet of pipelines and
10 roads and each of the wells. But, you know, just
11 driving up these roads and seeing the erosion --
12 you know, I have a pond that's filling up with
13 erosion coming off of the well site. And the road
14 is so rutted, I can't get up it hardly. I have to
15 use four wheel drive trucks. It's not reasonable.

16 SENATOR DONALD WHITE: So they have done
17 basically nothing since seven years ago?

18 MR. McCONNELL: They graveled my lane once
19 three years ago. I appreciate that, but it's
20 mostly their damage that's caused the problems.

21 SENATOR DONALD WHITE: I very much
22 appreciate. You've been an advocate in our area
23 since it first came to your attention, and you've
24 been a big leader on the issue. And I thank both
25 of you for your testimony.

1 SENATOR MARY JO WHITE: Senator Stout?

2 SENATOR STOUT: Yes, Madam Chair. During
3 this period when these wells were developed and
4 during the periods that they were maintained, has
5 DER ever come out and inspected the well sites or
6 the access roads and the pipelines?

7 MR. McCONNELL: Yes, they have. DEP has been
8 cooperative and done what they could. But I don't
9 necessarily want to set up a personal hotline to
10 these guys, which is about what I'd have to do if
11 I were to try to monitor the daily activity on the
12 property.

13 SENATOR STOUT: Has anything been done to
14 improve the conditions that are found there at the
15 well site or on the access roads and pipelines?

16 MR. McCONNELL: Aside from graveling my lane
17 one time, there has not been substantial repairs
18 or changes made. Initially they had put three of
19 the wells in pastures with these pumping well
20 heads, and my cattle were licking the grease off
21 of the wells and so forth. They did put fences
22 around them. I appreciated that.

23 But it seems to me, that would be a sensible
24 move in the beginning again rather than after I
25 goaded them to it.

1 SENATOR STOUT: You mentioned that a pond on
2 your property has been polluted from these wells.
3 Has DER done anything concerning the pollution of
4 this pond?

5 MR. McCONNELL: No, sir. Again, I have
6 corner of one pasture that every times it rains it
7 fills up because of the way they blocked the
8 runoff. You know, every storm, the mud comes
9 pouring in off of these roads.

10 If I were to call DEP with every complaint
11 that I have, I would be on the phone every day
12 with them. There were areas that were supposed to
13 have been seeded that weren't seeded, you know,
14 where they put pipelines through the woods and
15 stuff. You know, now that's all marred from
16 erosion. Had they done it right to begin with, it
17 would be grass. You know, it's that kind of
18 thing. I could sit all day and list the problems.

19 SENATOR STOUT: What knowledge do you have,
20 how many wells in your community, your Indiana
21 County community, are there of these methane
22 wells?

23 MR. McCONNELL: In Black Lick and Burrell
24 Township of Indiana County, there's about a
25 hundred and fifty now. There are more going in up

1 into Centre County, Center Township I mean. And I
2 know Rick Fagen I believe has some going in on his
3 property and some of the other farmers that are in
4 the area.

5 SENATOR STOUT: Thank you, Madam Chairman.

6 SENATOR MARY JO WHITE: I have one question
7 for Mr. Davis. At the beginning of your
8 testimony, you said that in your area of Cambria
9 County, the mineral rights the coal bed methane
10 drillers are using were often bought at tax sales.
11 Are you talking about way back historically?

12 MR. DAVIS: No. They're doing it right now.

13 SENATOR MARY JO WHITE: They're currently
14 being bought at tax sales?

15 MR. DAVIS: They're doing it right now.
16 Because the coal companies, like Eastern
17 Associated, Marvin Tucker went out of business
18 some thirty years ago; and they did not pay their
19 taxes on their mineral states. So the county owns
20 them. So you go up to the county and spend some
21 time and check out these mineral rights. If tax
22 is paid, you can put a hundred dollar bid on the
23 taxes. It comes to an auction. If no one bids
24 against you at that auction, you buy the mineral
25 rights for a hundred dollars and closing costs.

1 SENATOR MARY JO WHITE: And your proposal is
2 that before anyone should be allowed to purchase
3 mineral rights under a tax sale that there should
4 be notice given to the surface owner?

5 MR. DAVIS: Yes. There's a notice in the
6 paper, but all it will say is Cambria Township,
7 mineral. Because the surface parcel is a
8 different number than the mineral parcel, to
9 figure out that's your property, you have to go to
10 the courthouse and spend a lot of time going
11 through records there to figure out if that's your
12 property.

13 SENATOR MARY JO WHITE: Thank you. Senator
14 Wozniak?

15 SENATOR WOZNIAK: What's been happening,
16 Madam Chairman, he's exactly right. The people
17 are coming in; and for a hundred dollars, they
18 just bought everything underneath somebody's farm,
19 maybe a hundred and thirty acres, three hundred
20 acres for a hundred bucks. That's what's
21 happening.

22 Just to move this forward, has anybody
23 approached you as a surface owner before the time
24 to drill for methane on your land?

25 MR. DAVIS: One of the things about the farm

1 preservation program, you have to proof surface
2 rights. So I did a tax sale on my mineral rights
3 five or six years ago. On the farm that I lease,
4 yes, there's been property on there. We see them
5 out driving through an alfalfa field one day.
6 Drive up. What you guys doing? None of your
7 business.

8 SENATOR WOZNIAK: Thank you, Madam Chairman.

9 SENATOR MARY JO WHITE: It does seem to me
10 that a lot of this could be addressed in the
11 permit process. If they have to get a permit to
12 drill, there should be requirements similar to oil
13 and gas that say the surface owner has a right to
14 consult with them concerning the location of
15 wells. You can't unreasonably withhold the
16 consent, but you have a right to consent.

17 There are erosion and sedimentation
18 requirements in oil and gas drilling. There are
19 restoration requirements in oil and gas drilling.
20 I believe there is some reimbursement for roads.

21 But royalties belong to the owner of the
22 mineral, so I don't know why we would be talking
23 to royalty to a landowner that doesn't own the
24 mineral. I think that's out in left field.

25 But compensation for reasonable land use does

1 not seem to be completely inappropriate, and
2 certainly restoration of the land and the property
3 would appear should be part of the permit and
4 perhaps even a bonding situation to make sure it's
5 done appropriately.

6 MR. DAVIS: If I could address that quickly,
7 out in our area, there's been a lot of publicity
8 and TV reports. The senator would know about
9 this. So the company went in to Chester Township,
10 Clearfield Township of Cambria County. They are
11 offering royalties, one thirty second royalties,
12 on the coal bed methane wells plus a thirty-five
13 hundred dollar damage for well sites in the field,
14 twenty-five hundred dollars if it's in the woods.
15 So they're already offering it. Some companies
16 are already offering it.

17 SENATOR MARY JO WHITE: Any other questions?
18 Thank you. Very helpful.

19 MR. HENDERSON: Our next witnesses are George
20 Ellis, president of the Pennsylvania Coal
21 Association, and Steve Rhoads on behalf of the
22 Pennsylvania Oil And gas Association and the
23 Independent Oil and Gas Association.

24 MR. ELLIS: Chairwoman White, Senator
25 Wozniak, Senator White, Senator Stout, staff, good

1 morning. My name is George Ellis, and I am with
2 the Pennsylvania Coal Association. Also with me
3 this morning is Gary Slagel, Director of
4 Governmental Affairs for Consol Energy and PCA's
5 board chairman for 2007.

6 We appreciate this opportunity to provide the
7 committee with the coal industry's perspective on
8 issues relating to coal bed methane. For the sake
9 of time, I'll try and summarize my testimony.

10 Questions regarding who owns the rights to
11 coal bed methane and how those rights are played
12 out with those of the surface owners are not new
13 to Pennsylvania, as you clearly heard this
14 morning. The former question on ownership was
15 answered in 1983 by the Pennsylvania Supreme Court
16 decision which held that whoever owns the coal
17 also owns the coal bed methane. I'll discuss this
18 issue in a little more detail later in my
19 testimony.

20 The latter question relating to how the
21 ownership rights play out vis-a-vis the surface
22 owners' rights was addressed by a legislative
23 committee inquiry in 2003. At that time, an
24 Indiana-based group alleged that the rights of
25 surface owners were being trampled by the owners

1 of coal bed methane. In response, the Joint
2 Legislative Air and Water Pollution Control
3 Committee under the leadership of State
4 Representative Scott Hutchinson conducted almost a
5 yearlong inquiry on the allegations. Included in
6 the joint committee's investigation was a thorough
7 review of the longstanding tenets of
8 Pennsylvania's common law and property law and the
9 balancing of property rights that they provide
10 between the mineral and surface owner.

11 In a letter summarizing the joint committee's
12 findings, Chairman Hutchinson said that
13 Pennsylvania's current property rights law is well
14 established and strikes an appropriate balance
15 among the rights of landowner, coal owner, and CBM
16 driller.

17 He concluded by saying that he would oppose
18 any efforts to advance legislative proposals that
19 would result in a radical change to the property
20 rights of mineral owners. We concur with the
21 chairman's position.

22 Most of the legal issues involved in
23 Pennsylvania's coal bed methane projects are
24 governed by long standing rules of Pennsylvania
25 property law, and these rules and the import of

1 their language are well recognized and understood.

2 In Pennsylvania, common law recognizes three
3 estates in land: mineral, surface, and the right
4 of support. These estates may be owned by
5 different people. When a mineral, for example,
6 coal, is purchased from the owner of the land by
7 another person, a separate estate in land or coal
8 estate is held by that person. And these
9 transactions creating separate coal estates are
10 referred to as severances.

11 The coal estate is an interest in land
12 separate and apart from the estate held by the
13 surface owner. The mineral estate is entitled to
14 the same level of constitutional protection as the
15 surface estate.

16 Coal bed methane and natural gas generally
17 have similar physical and chemical properties, but
18 CBM is associated with the coal seams in which it
19 is formed as opposed to the natural gas sands in
20 which conventional natural gas is located. The
21 most important difference between the two though
22 is legal.

23 The CBM ownership issue was definitively
24 resolved in Pennsylvania in 1983 by the
25 Pennsylvania Supreme Court in the Hoge decision.

1 The Court expressly held that such gas as is
2 present in coal must necessarily belong to the
3 owner of coal so long as it remains within his
4 property and subject to his exclusive dominion and
5 control.

6 The Court went on to say that the owner of
7 the coal may exercise his right to use his
8 property, provided his action doesn't impinge on
9 the rights of surface owners.

10 It should be noted that given the location of
11 coal reserves in rural areas in Pennsylvania, coal
12 operators and farmers have historically enjoyed a
13 strong working relationship. This has continued
14 as PCA member companies that capture and sell coal
15 bed methane contact the landowner in advantage of
16 any drilling and work in good faith towards
17 reaching a mutually satisfactory agreement on the
18 location of roadways, pipeline routes, and well
19 location and repair damage caused to the
20 landowner's property.

21 Pennsylvania's case law dealing with property
22 rights is adequate in balancing mineral
23 development with due concern for the surface
24 owner's interest. The existing situation does not
25 warrant new laws, and PCA would oppose any

1 initiative that would limit our ability to extract
2 the resource or alter our constitutionally
3 protected property rights.

4 We view certain recommendations offered by
5 critics of the status quo, for example, requiring
6 the surface owner consent to access the land as a
7 prerequisite for obtaining the well permit or
8 mandating royalty payments to surface owners of
9 severed estates, as tantamount to taking our
10 property and readjusting long-settled property
11 rights. This is similar to the conclusion drawn
12 by the joint committee in it's report.

13 The correlation between the rights of coal
14 bed methane owners and surface owners in how
15 Pennsylvania's property law applies to each was
16 best explained by the Pennsylvania Superior Court
17 in its decision in the Hiltabidle case. This
18 decision essentially lays out how the respective
19 rights of the coal bed methane owner plays out
20 with the surface owner's rights within the context
21 of the Hoge decision.

22 In Hiltabidle, the Indiana County Common
23 Pleas Court enjoined access to surface land for
24 CBM development claimed under conventional mining
25 rights granted in a coal severance deed. The

1 Common Pleas Court decision however was reversed
2 by the Superior Court.

3 The Superior Court applied long-standing
4 principles of Pennsylvania law dealing with
5 correlative rights involved in in concurrent use
6 and development of separate estates and land. The
7 Court found that the law requires the surface
8 owner to allow access to a separately owned
9 subsurface mineral deposit but that this right
10 must be exercised reasonably to accommodate the
11 interest of the surface owner.

12 PCA supports concurrent development of
13 mineral resources with due accomodation of surface
14 owners' rights and interest. As I explained
15 earlier in my testimony, our members and their
16 lessees go to great length in their efforts to
17 secure in advance separate and explicit surface
18 rights for coal bed methane development from the
19 surface owner.

20 In our experience, Pennsylvania local courts,
21 absent negotiated agreements, expect developers to
22 be prepared to reasonably accommodate surface
23 owners' rights and interests by limiting surface
24 impacts to those reasonably necessary to
25 extraction.

1 But under common law principles, the owner of
2 a subsurface mineral interest, here coal bed
3 methane, has a right of access to that interest,
4 over and through the surface overlying it.

5 Legal principals aside, coal bed methane
6 production can be and is being done in a manner
7 that is sensitive to surface owner interests and
8 concerns.

9 Time permitting during the question and
10 answer period, Mr. Slagel is prepared to elaborate
11 on the practices of CNX gas, a subsidiary of
12 Consol involved in CBM development, relative to
13 that how that company addresses surface owners'
14 issue.

15 Since Steve will address the statutory
16 regulatory requirements covering coal bed methane
17 extraction, I'm going to skip over this section
18 and go into Senate Bill 61.

19 We've also been asked to provide comments on
20 a bill, Senate Bill 61, pending before this
21 committee which would provide surface owners who
22 don't own the mineral rights beneath their
23 property the right of first refusal to purchase
24 the minerals if they are being offered for sale.

25 For the sake of time, we have listed our

1 concerns with the bill as Attachment 1 of our
2 testimony. While we oppose this bill, I
3 personally had preliminary discussions with
4 Senator Wozniak, the sponsor of the bill, and will
5 continue to do so. We'd also be willing to meet
6 with committee staff to discuss our concerns in
7 more detail and try to reconcile a proposal if the
8 committee deems it helpful.

9 Finally, as the state and nation moves toward
10 a position of energy independence, one of the keys
11 for achieving energy self-sufficiency is the
12 ability to maximize development of all our
13 indigenous sources, including coal bed methane.

14 For decades CBM had been considered a
15 nuisance gas that often stymied the safe and
16 systematic development of coal reserves. Advances
17 in technology and the government's commitment to
18 reduce our reliance on foreign oil have led to a
19 re-evaluation on how we treat methane.

20 Policies are now being established to
21 encourage capturing and using coal bed methane as
22 an energy source. Millions of dollars have been
23 invested by the private sector in such development
24 projects.

25 Not only is coal bed methane beneficial in

1 helping diversify our energy portfolio, it is also
2 producing significant regional economic benefits
3 in terms of creating jobs and improving revenue
4 bases.

5 In addition, since coal bed methane is
6 considered a greenhouse gas that is twenty-one
7 times more potent than carbon dioxide, capturing
8 it where feasible instead of venting it into the
9 atmosphere also pays environmental dividends.

10 Attempts to limit an owner's proper right of
11 access to this resource and to discourage its
12 development would foreclose these economic,
13 environmental, and energy security benefits.

14 In conclusion, PCA maintains that legislation
15 is not needed to resolve any ownership or access
16 issues in Pennsylvania. Again, thank you for
17 giving us this opportunity to present our views;
18 and we'll be happy to attempt to answer any
19 questions.

20 MR. RHOADS: On the behalf of the
21 Pennsylvania Oil and Gas Association and the
22 Independent Oil and Gas Association of
23 Pennsylvania, I want to thank you, Senator White
24 and members of the committee, for this
25 opportunity.

1 My name is Steve Rhoads. I'm the president
2 of the Pennsylvania Oil and Gas Association. With
3 me today is Craig Mayer. Craig is the counsel to
4 the Pennsylvania General Energy Corporation.
5 Pennsylvania General Energy is a Warren-based
6 independent oil and gas business with operations
7 throughout Pennsylvania.

8 What we'd like to do here today, we're going
9 to split the testimony between the two of us. And
10 what we're going to do here today is address what
11 we believe is really the core issue here; and that
12 is the whole idea of the split estate, the fact
13 that the ownership of the minerals is severed from
14 the ownership of the surface and what the
15 implications are in terms of our own common law.

16 We'd also like to discussion some of the
17 other issues related to this whole controversy.
18 But to begin, I want to turn this over to Craig.

19 MR. MAYER: Senator White and Senators, thank
20 you very much. I'm going to refer you to the
21 testimony as well as the legal paper that I
22 drafted and just then just skip to the body of the
23 testimony rather than repeating it in the interest
24 of time.

25 First of all, in the paper itself, there's a

1 summary of what the common law is; and I think
2 it's been stated here today very easily and
3 succinctly. It's really not in a state of dispute
4 as to what in fact the rules are.

5 Basically in dealing with this issue, and I'm
6 referring to the testimony, it's sort of important
7 to step back from the detail and a lot of the
8 things that detract some of the attention and look
9 to do what it is that the legislation purports to
10 do. It basically purports to terminate a mineral
11 owner's existing surface easement or right-of-way,
12 whether created impliedly or expressly, in the
13 deed of severance for a grant, okay, and replace
14 it with an option for the mineral owner to
15 repurchase the previously held easement or
16 right-of-way.

17 We're extinguishing a right, and then we're
18 giving back to the mineral owners the right to
19 repurchase something they already own. It's
20 simply an exchange of money from one industry, if
21 you will, or one private party to another private
22 party. That's fundamentally what's happening with
23 respect to the property interests that are
24 involved in the case of the surface easement with
25 regard to mineral rights.

1 The effect of the legislation, and I'm
2 referring here to House Bill 2899, which is the
3 one that was in existence, is to enrich the
4 surface owner at the expense of the mineral owner
5 and developer.

6 What's happening is -- and perhaps the bill
7 that was passed back in May of last year, 2006, as
8 a result of the Kelso decision where the
9 government obtained private rights and in return
10 passed them on to a private developer, very
11 similar thing as would be occurring here where
12 private rights are taken and given to another
13 party, another private party.

14 It does nothing really to prevent the land
15 from being used for non-agricultural purposes. It
16 simply allows somebody to be compensated for that.
17 The land still goes out of agricultural use, and
18 the other industry continues to use it.

19 Basically the legislation that has been in
20 existence and the common law that has arisen since
21 1893 and as long ago as 1915, the accommodation
22 doctrine that allows the surface owner and mineral
23 owner to reach an accommodation, has been the law
24 of Pennsylvania.

25 It's our position that that should continue.

1 That doesn't need to be altered or changed at this
2 point in time. Thank you.

3 MR. RHOADS: Craig highlights a critical
4 point here, and that is the fact that we have in
5 Pennsylvania under common law an accommodation
6 doctrine. The accommodation doctrine is something
7 that producers in this state, oil and gas
8 producers, coal bed methane producers, understand
9 and take very seriously.

10 It's a matter of routine for producers to
11 contact the owner of the land in which they intend
12 to drill a well in advance of applying for a
13 permit from DEP. Producers understand the
14 importance of early contact in identifying water
15 wells and springs, high value farm fields, timber,
16 and other surface assets that are important to the
17 landowner.

18 Early discussions with the landowner allow
19 the producer to modify his drilling plans by
20 placing well sites, pipelines, access roads, and
21 other earth disturbances on locations that can
22 cause as little intrusion or inconvenience to the
23 landowner as possible.

24 These contacts and accommodations are
25 particularly important in situations where the

1 surface owner has no financial stake in the
2 development of the minerals. This is a concern
3 that, as you know, is particularly acute with coal
4 bed methane because the coal estate is almost
5 always severed from the surface estate.

6 Another issue that has been coming up
7 routinely in these discussions is just what is the
8 regulatory framework today for coal bed methane
9 wells.

10 There has been some rumors that coal bed
11 methane wells are totally unregulated. This is
12 totally untrue. The Oil and Gas Act of 1984
13 established a comprehensive regulatory framework
14 for the drilling, production, and plugging of all
15 oil and gas wells. That includes coal bed methane
16 wells.

17 Act 223 also contains a variety of provisions
18 that is specifically designed to protect the
19 surface owner and his interests from potential
20 harm caused by the oil and gas operations and also
21 to give the surface owner a potential, an
22 opportunity to participate in the well permitting
23 decision.

24 Attached to our testimony is a handout that
25 lists the key provisions of the Oil and Gas Act

1 that are meant to protect the surface owner and
2 his property. There are two important provisions
3 of this act that I'd like to highlight in light of
4 some of the discussion we've had here today.

5 One of them is rebuttal presumption that any
6 damage that occurs to a private water supply
7 during the drilling of a well and for a period of
8 time after the well is drilled, the presumption is
9 that the drilling caused the damage. It's on the
10 driller of the permitted well to demonstrate that
11 he did not cause the damage. This is not only
12 water quality but also diminution of quantity.
13 The presumption applies to both.

14 Another issue that's in the Oil and Gas Act
15 currently is the surface owner's opportunity to
16 object to a well location during the permitting
17 process and also an opportunity for the surface
18 owner to request a conference with DEP and the
19 permittee on any issue, to resolve any issue by
20 mutual agreement, on any issue that's dealt with
21 by the Oil and Gas Act.

22 As Craig discussed and as George discussed,
23 the Commonwealth enjoys long established
24 principles of settled common law that recognize
25 the rights and duties of different property

1 interests when the surface estate is severed from
2 the underlying minerals.

3 Implicit in Pennsylvania common law is the
4 requirement for the mineral owner to give the
5 surface owner reasonable advance notice of planned
6 use of the surface for mineral extraction. That
7 usually leads to some form of accommodation with
8 the landowner over the mineral owner's use of the
9 surface.

10 Because of that, it's very difficult for us
11 to make any recommendations on possible
12 legislation to improve on the current scheme of
13 things. Any attempt to reduce one hundred plus
14 years of common law to a few succinct sections of
15 legislation will likely do more harm than good in
16 our opinion and would definitely set the stage for
17 even more litigation.

18 One of the biggest threats that we fear from
19 legislation that we're talking about today, and
20 this is a threat that is not only implied in all
21 the complaints that you hear but was expressly
22 stated in the testimony today, would be an attempt
23 to overturn what's called the doctrine of mineral
24 estate dominance.

25 There is a very good public policy reason why

1 the Courts have always deferred to the mineral
2 estate whenever there's been a conflict between
3 you are surface owners and the developers of the
4 indigenous energy resources.

5 Energy in all of its forms is the bedrock of
6 our economy and our culture. Oil, gas, coal, and
7 now coal bed methane are absolutely to essential
8 for our way of life; and they will be continue to
9 be essential for in generations ahead, no matter
10 how much money pour into the development of
11 alternative energy resources.

12 Today our nation relies on coal bed methane
13 for about nine percent of its total dry gas
14 production. In Pennsylvania, the most recent
15 estimates we have of coal bed methane reserves are
16 about 2.7 trillion cubic feet of gas. The
17 production value of those reserves at today's
18 prices for natural gas would equal more than
19 twenty billion dollars.

20 Pennsylvania common law has long recognized
21 that access to our nation's rich mineral wealth
22 should not be jeopardized by a conflict between
23 two private parties over a piece of ground. It's
24 just too important, too essential to our common
25 comfort and prosperity to set unnecessary

1 roadblocks to the development of these extremely
2 important resources.

3 The contractual consent that you've heard
4 about today and the consent agreement concepts are
5 provisions that have been included in a number of
6 pieces of legislation that have been introduced
7 over the last couple years. These bills
8 essentially reject Pennsylvania common law and
9 create serious constitutional issues for the
10 owners of coal bed methane in particular but also
11 owners of minerals in general.

12 The most basic effect of mandatory surface
13 use agreement legislation would be a state-imposed
14 impairment of contract, impairment of the deed by
15 the effective transfer of a critical element of
16 mineral estate, the right-of-way to the surface
17 owner.

18 Not only does such a provision of law impair
19 and diminish the value of the mineral estate and
20 associated leases, it also allows the surface
21 owner to hold the mineral estate hostage by
22 forcing the owner of the coal bed methane and the
23 lessee of coal bed methane rights to pay a ransom
24 for a right of access that they already own.

25 These are very serious concerns that we have,

1 Senators; and it makes it very difficult for us to
2 try to come to some agreement when what we seem to
3 be asked to do is to essentially negate a right
4 that we currently have in order to make an
5 agreement with the surface owner. It's a very
6 difficult issue.

7 SENATOR MARY JO WHITE: It is a difficult
8 issue. But as you point out, energy is very
9 important; but so is agriculture. I don't want to
10 be cutting this baby in half or having to decide
11 between two very important interests.

12 You mentioned, Mr. Ellis mentioned that all
13 his members are aware of all this, that they make
14 every reasonable attempt to accommodate, that they
15 notify before they come on the land. But we heard
16 from some people here today where that isn't
17 happening. You know, they find somebody out in
18 their field. They say, What are you doing here;
19 and they say, None of your business. Now, that
20 doesn't sound to me like reasonable accommodation,
21 so some of what we're hearing here doesn't jibe
22 with, you know, with what you're telling me. I
23 continue to be kind of pushing myself towards the
24 point where -- and I understand what you're
25 saying. I'm not sure the mineral owner should be

1 required to buy back his right of access which is
2 part of the estate. I think that's settled law.
3 But we've got to do something. It seems to me
4 that it's through the regulatory process and the
5 well permitting process that we require the
6 sit-downs with the landowner, that we require the
7 reasonable accommodation, that we require them in
8 the permit to demonstrate that they are meeting
9 all of these requirements, that they're not
10 interfering with the landowner's right to have
11 cows out in his pasture or crops in his field.

12 I think that some of those accommodations can
13 be worked out through the permitting process. Is
14 there a bond required in the drilling of the coal
15 bed methane wells?

16 MR. RHOADS: There is a bonding requirement
17 required by the Oil and Gas Act.

18 SENATOR MARY JO WHITE: So they're posting
19 the bond, and that bond should be available to the
20 surface owner to make sure that the reclamation
21 takes place. Is there an erosion and
22 sedimentation plan?

23 MR. RHOADS: Yes. All the oil and gas --

24 SENATOR MARY JO WHITE: I don't understand
25 how Mr. McConnell's situation happened. Obviously

1 it was not in force.

2 MR. RHOADS: Mr. McConnell's situation is
3 governed by Pennsylvania law. The Clean Streams
4 Law governs the activities of the developer of oil
5 and gas wells, including coal bed methane wells,
6 conducts on the surface. Whenever you disturb the
7 surface, you're required to have an E and S plan,
8 that plan must be implemented. The plans are
9 constantly evolving under DEP regulations.
10 There's a new requirement for post construction
11 storm water management. All these issues apply to
12 oil and gas development activities, just like they
13 do to residential construction and everything
14 else.

15 SENATOR MARY JO WHITE: So all of these
16 requirements are part of the coal bed methane
17 permit?

18 MR. RHOADS: That the person who drilled
19 these wells -- then somebody's not enforcing the
20 permit.

21 MR. RHOADS: I can't tell you what DEP is
22 doing or not doing. I do know that they do have a
23 very strong presence in the oil and gas field. I
24 know they're limited in what they can and cannot
25 do. They have priorities in terms of what they

1 look at.

2 I do know that their primary inspection
3 priority under their policies today is to look at
4 the acute impacts of the drilling of the well.
5 They are there primarily during the activities
6 when the well is being drilled, when the earth is
7 being disturbed. That's when they're there
8 primarily with most of their inspection work.
9 They don't come back usually after the fact, after
10 the well has been reclaimed.

11 You know, we do have a responsibility under
12 the Oil and Gas Act. Once a well is drilled, we
13 have a responsibility to reclaim the well site and
14 take it back to its natural state as soon as
15 possible. We have no more than nine months to do
16 that after the well is completed. It isn't like
17 the impacts -- the impacts we're having, no
18 offense to my friends to my left here, the impacts
19 we're having are nothing like surface mining.

20 SENATOR MARY JO WHITE: I agree with that.
21 What's the average life of a coal bed methane gas
22 well?

23 MR. RHOADS: The issue is not so much of what
24 the average life of it is. It's what the average
25 impact is on the surface when we're there. We

1 have a very short impact. The land is generally
2 restored. The use of the farm field is restored
3 after the well is drilled and the land is
4 reclaimed. We're not taking away the productive
5 life of that agricultural field. We're there.
6 Certainly we're there. But the economic value of
7 the field is not gone by any stretch of the
8 imagination.

9 SENATOR MARY JO WHITE: But in Mr.
10 McConnell's situation, I'm interested at what
11 point can he expect those well to be done and his
12 land restored to its prior -- because that's the
13 law, right?

14 MR. RHOADS: In Mr. McConnell's situation, it
15 sounds like he would rather have them there if
16 he's earning a royalty.

17 SENATOR MARY JO WHITE: Well, sure.

18 MR. RHOADS: And get rid of them if they're
19 not.

20 SENATOR MARY JO WHITE: Well, I understand
21 that. You know, there's no question in my mind
22 from his description that his land is being
23 burdened. You've got gas wells there and you're
24 giving him royalties from that, that a burden he's
25 willing to accept. You look at the coal bed

1 methane, he's deriving no benefit from it; and it
2 sounds like he's getting excessive hassles and
3 disadvantages.

4 MR. RHOADS: Gary would probably know better
5 about the life of a coal bed methane well.

6 SENATOR MARY JO WHITE: And I'm just saying
7 when is his problem going to end, because at some
8 point when those wells are no longer productive,
9 that person, that owner/operator, whoever did
10 that, has to come back and reclaim that property.

11 MR. ELLIS: If I may, Senator, what I'd like
12 to say is pass it on to Gary and with time
13 permitting, kind of let Gary discuss what coal
14 companies who capture and sell the methane do in
15 terms of their working with the surface owner.

16 MR. SLAGEL: Madam Chairman, in response to
17 your question, we're fairly new into what we call
18 our Nittany area, which is primarily Centre and
19 Indiana County. So we don't have the long-term
20 experience we have in some of our other areas
21 we're worked and developed CBM fields.

22 I believe our folks are talking ten to twenty
23 years as maybe an average life of a CBM well up in
24 what we call our Nittany project. I could be
25 wrong, but I think that's the numbers I've been

1 generally hearing.

2 But to expand a little bit on what you've
3 already heard, I agree with you that there
4 seemingly are the protection in law and
5 regulations that should govern the conduct of CBM
6 operators out in the field. And for the most
7 part, I think they do. I think we don't want to
8 see the burden placed on you as legislators or on
9 DEP as regulators as having to address the worst
10 case situation which in many cases you're forced
11 to do because of a few bad actors. I think for
12 the most part, the industry is making strikes.

13 We, ourselves, CNX Gas, when we moved into
14 the Nittany project field, I think moved in there
15 with some trepidation because of the bad media,
16 that the coverage that was coming out of this area
17 as a result of one or two irresponsible operators
18 and found out that, gee, once you go in there and
19 you start communicating openly and you deal
20 responsibly with the surface owners, they're very
21 accommodating. You give them an opportunity to
22 make a decision on well location, where do you
23 want the access road, where can we put the
24 pipeline in that will minimize the impact to your
25 agricultural operation. Those things can all be

1 discussed and dealt with in a very fair and
2 equitable way.

3 I mean, we've even had dealings with township
4 supervisors and worked things out with gentlemen
5 who maybe have some elected authority even at that
6 local level.

7 So it's not been a problem so far for us. In
8 fact, we negotiated with sixteen landowners so far
9 on forty-eight well sites in a fairly new area for
10 us and have not had one rejection. And in fact,
11 if the surface owner doesn't want us on the
12 property, we'll go somewhere else. I mean, it's
13 that clear. But I think when you go in and
14 approach them from the standpoint that we want to
15 work with you, will you work with us, we find that
16 they're very open to that sort of approach.

17 SENATOR MARY JO WHITE: Do you offer any
18 benefits to the surface owners?

19 MR. SLAGEL: Well, we do compensate them for
20 the well site location and for the rights-of-way
21 and the access roads, yes.

22 MR. RHOADS: This is also very typical in oil
23 and gas development in general. There are
24 different types of compensation offered. It
25 depends on the situation. If there are certain

1 assets like timber, for example, that's harvested,
2 there's usually an accommodation made in the
3 handling of it to make sure that the landowner
4 gets the value of the timber, any timber that must
5 be removed for an access road or a well site.

6 It is critical. It is absolutely critical
7 that we do talk ahead of time as much as we
8 possibly can to try to make sure that we both
9 understand what our rights are and we both
10 accommodate one another.

11 I didn't mean to imply, Senator, that
12 everybody is a wonderful person out there. We
13 know there have been problems, or we wouldn't be
14 here. But there is a rule of law in Pennsylvania
15 under the common law. Common law requires us to
16 try to accommodate one another. And if we don't
17 do that, then we're subject to litigation in
18 courts. We're subject to damages if we don't do
19 what we're supposed to do to try to accommodate --

20 SENATOR MARY JO WHITE: I appreciate that,
21 but I also appreciate Mr. McConnell's situation
22 where he shouldn't have to expend his financial
23 resources to go to court to protect his property.
24 There should be some protection there.

25 And again, I think the permitting process

1 sounds like the place with more enforcement and
2 inspection.

3 MR. MAYER: Madam Chairman, basically there's
4 two issues. The first is it's clear under the law
5 what that the surface owner has a right to is a
6 right to have reasonable use determined, and
7 that's an important right. That's what the
8 accommodation doctrine basically says throughout
9 the country, and essentially it's pretty much that
10 way throughout the country in oil and gas and
11 mineral law.

12 SENATOR MARY JO WHITE: Then the question is
13 determined by whom? The property owners would
14 like this to be a negotiated situation.

15 MR. MAYER: That's correct. And so would
16 the oil and gas operators and CBM operators like
17 it very much the same. So when you point to
18 things such as having something more in the
19 permitting process, perhaps in the conference
20 process, to ensure that this reasonable use is
21 determined in an appropriate way without doing
22 harm or inverting the dominant estate or the
23 right. And it I think it's been recognized. I
24 don't think anyone's taking issue with that, of
25 the mineral estate to being assess its mineral.

1 If you get to the point where you say you
2 can't have entry onto the surface because that's
3 the only way someone can access the minerals, then
4 you're inverting the estates and you are taking
5 away, you know, making the ownership in the
6 mineral rights a mere illusion and not, in fact,
7 you know, a right, if you will.

8 So in looking at it, I think what breaks down
9 as is often the case is an initial contacts with
10 regard to having reasonable use determined and how
11 one goes about that in a very efficient and less
12 costly way.

13 In our industry, I know in our practices, we
14 really don't experience difficulties in that
15 regard. We approached the landowners and enter
16 into negotiations.

17 SENATOR MARY JO WHITE: I'm getting the gist
18 here that because the coal estate has been severed
19 from most agricultural properties, you have a
20 situation where the surface owner does not derive
21 the benefit, whereas in the typical oil and gas
22 situation, the farmer owns the oil and gas and
23 therefore is getting royalties. So therein is the
24 rub, and now I'm beginning to understand why this
25 is a different issue.

1 Senator White, did you have a question?

2 SENATOR DONALD WHITE: Madam Chairman, may I
3 ask Mr. McConnell one question?

4 SENATOR MARY JO WHITE: Sure.

5 SENATOR DONALD WHITE: Upon completion of the
6 seven wells on your property, what recourse did
7 you take and whatever happened there? Did you sue
8 Bowman Blake? Did you have any recourse at all?

9 MR. McCONNELL: No. We put forth quite a bit
10 of our financial resources, including everything
11 that we got from the damages, in compensation for
12 the damages to our property, to get legal advice
13 on this issue; and the advice of our attorneys, we
14 would need to fight this the whole way probably to
15 the Supreme Court unless the legislature took
16 action on it. So we tried to focus our attention,
17 upon advice of our attorneys, also on the advice
18 of Dr. Cyril Fox from the University of
19 Pittsburgh, we went this route.

20 But the problem, Senator White, is that this
21 issue is -- the legal instrument by which these
22 people come onto our properties isn't a gas deed.
23 It's a coal deed. The legal instrument that they
24 use to gain access to our property is a coal deed,
25 not a gas deed. So the law and what gives them

1 the right to come on the property isn't
2 necessarily a gas issue. It's a coal issue. The
3 state's looking at this gas well as if it were a
4 coal mine.

5 SENATOR MARY JO WHITE: Senator, I don't want
6 to start a debate. Senator Wozniak I believe had
7 a question.

8 SENATOR WOZNIAK: Not a question. Wrap this
9 up. We're pretty hearinged out here. I think
10 everybody understands the situation. Your
11 argument is we have the Hoge decision saying that
12 coal methane is part of coal, owned by the coal
13 people. Farmers are saying, That's gas, I should
14 get some extra bucks out it.

15 My interest, and this is I think trying to be
16 fair and with all respect to the lawyers, is the
17 people on the surface whether they like or it or
18 not that the coal methane is owned by the coal guy
19 underneath, whoever owns that.

20 The people on that surface have to be made
21 whole. The reason money was created was to even
22 things out. If you're going to come on a guy's
23 land, put five miles of highway on it, run pipes,
24 have noise, devalue his property, something has to
25 make that even.

1 And what I'd like to do to wrap this up is to
2 say can we have the coal operators, the mine
3 operators, the Farm Bureau sit down with our
4 people? And even though you're miles apart, let's
5 start talking and see if we can get little closer
6 and get as close as we possibly can by reasonable
7 people. And then the final piece of that is we
8 make it come together.

9 George, this reminds me years ago in the
10 house with Bud George and dealing with coal mine
11 operations, rebuttal presumptions, and the
12 hearings all over the state on that stuff. Things
13 worked out. I think we make it.

14 There are good actors out there. Some of my
15 farmers are completely satisfied with the people
16 that come on and drilled the methane. Some are
17 just adamant on the fact of how rude they have
18 been and just came on and said, We can do anything
19 we want.

20 Obviously there's some farmers, including Mr.
21 McConnell, saying, Hey, that's gas, I should be
22 getting royalties from that.

23 But right now, I want to make everybody even
24 on that surface. You have the right to go down
25 and get your gas. The person on the top has the

1 right to at least be made whole. That seems to be
2 the problem we have.

3 SENATOR MARY JO WHITE: Senator Stout, did
4 you have an another question?

5 SENATOR STOUT: Yes. Mr. Slagel, I know of
6 all the mining activities that you have in my
7 district in Washington and Greene County, most all
8 the coal is extracted by the long wall mining
9 methods. Are you coming back and recovering the
10 gas that remains after you've done the mining
11 activities?

12 MR. SLAGEL: Yes, Senator. Actually, we are
13 usually putting in degasification holes prior to
14 taking the coal and then converting those to
15 active CBM wells after the fact also.

16 SENATOR STOUT: You said earlier that the
17 life expectancy is ten to twenty years. A lot of
18 the areas in southwestern Pennsylvania have been
19 mined out years ago and abandoned. Are they still
20 producing any considerable methane production?

21 MR. SLAGEL: Senator, I don't know the answer
22 to that. I'm sorry. What I was referring to was
23 basically the Indiana County CBM situation which
24 is different than what we're dealing with in your
25 district which is basically the Pittsburgh coal

1 seam. It's not apples and apples in a comparison
2 sense.

3 SENATOR STOUT: Looking to the long term, I
4 notice the coal rights have been taken on the
5 Freeport seam which is much deeper than the
6 Pittsburgh. Would this same type of coal bed
7 methane be applied to the Freeport seam also?

8 MR. SLAGEL: That could certainly be
9 developed as a source for CBM, absolutely.

10 SENATOR STOUT: Now, I understand in the
11 southern projects in the Consol's territory that
12 they locate an electric generator on that site and
13 take the methane that the well produces and
14 converts it to electricity so they don't have to
15 put the large pipe systems to transport. They're
16 taking methane directly out of the mine and having
17 an electric generator and then shipping the
18 electricity to the power company.

19 MR. SLAGEL: Yes, you're absolutely right.
20 We have a demonstration project where we took
21 methane that was low quality methane, something
22 that could not be put into the pipeline system,
23 and actually co-fired a generator and ran the
24 electricity back into the transmission grid.
25 Those kinds of situations could be done for public

1 buildings and things like that where you could
2 locate a coal bed methane well nearby and run one
3 of these generations systems.

4 SENATOR STOUT: Thank you, Madam Chairman.

5 SENATOR MARY JO WHITE: That's very
6 interesting. Senator White, were you finished
7 questioning on that?

8 SENATOR DONALD WHITE: Just to Mr. Slagel, if
9 all the actors out there -- I think you said
10 forty-eight wells you contracted for already in
11 Indiana County. I commend CNX for the job and the
12 way you professionally have handled this. I have
13 had many compliments about your efforts and your
14 work back there. I hope that that can be the
15 standard for the entire drilling industry.

16 MR. SLAGEL: Thank you, Senator.

17 SENATOR MARY JO WHITE: Thank you, gentlemen.
18 Thanks to everyone who testified. This was very
19 informative.

20 (The proceeding concluded at 11:30 a.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings, and
4 that this copy is a correct transcript of the
5 same.

6 Dated at Wormleysburg, Pennsylvania, this
7 26th day of June 2007.

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Patricia M. Brown
Reporter - Notary Public

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