

# The Testimony of

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In our economics classes we are taught that agriculture and mining are the cornerstones of all productive economies. Agriculture gives us our shelter, clothing, food and even the table upon which that food is served. Mining, including gas and oil production, provides our utilities, plumbing, transportation, infra-structure, and other amenities which define our societal prosperity. Our engineers fashion the minerals dug from the ground into shapes and sizes which are useful for each of us to conveniently access and consume the fruits of our fields and forests. By administering the distribution system our managers, supervisors, clerks and salespeople enhance the ease and comfort of our lives--lives lived in relative contentment because of the rock solid economic cornerstones of agriculture and mining.

Pennsylvania earned its nickname, the Keystone State, in a nation abounding with productivity and individual ambition because this commonwealth has employed its abundant agricultural and mineral resources to benefit its own citizens and the rest of the nation. That keystone, which is our namesake, is held firmly in place at the apex of the arch because the cornerstones which hold it high are equally strong and equally stable. Both agriculture and mining must remain equally strong for the keystone to remain in place.

What happens when we chip away at one of these cornerstones? What happens if we undermine one pillar and use that ore to prop up the other? Does that imbalance make the keystone more stable or less? Will aiding Pennsylvania's mining industry while weakening its agricultural industry ultimately strengthen or weaken this commonwealth's economy? I submit that it will weaken it. As the matter relates to coalbed methane development in Pennsylvania, farmers are required to bear a heavy burden for the state's mining industry.

In 2003, my 385 acre farm in southern Indiana County became host to seven coalbed methane wells and over 20,000 linear feet, nearly five miles, of access roads and pipelines. Four years later the access roads are eroded, potholed eyesores alternating between mosquito harboring puddles and dusty expanses. My pond is filling with the runoff from the erosion of these roads and pipelines. My pastures are likewise impaired. The drainage of my fields has been altered, with the spring of each year resulting in new pools where they aren't supposed to be—maybe in compensation for the pond being filled in by erosion. The lane to my house is rutted and potholed as a result of heavy truck traffic and the daily visits by well-tenders. As a necessity to access the wells, gates have been installed where I don't want them and these gates are often left open, either by well-tenders or by other parties who, upon seeing any gate, must instinctively stop and open it and leave it open.

Whether constructing fences or buildings, or planting and harvesting crops, or contouring fields, or laying drainage, or driving upon my lane I am impaired by coalbed methane wells and their incumbent development. Day and night the clanking of well heads and the chugging of engines destroy the quiet enjoyment of my property. CBM development has also injured any future hope I might have for developing the property or even providing suitable home sites for my children, should they decide to chance living so close to their parents. My property value is diminished and the prospects for the future are darkened due to CBM. In short, coalbed methane development, though a boon to the mining industry, is a bust to the farmers and landowners of Pennsylvania.

In southern Indiana County we host about 150 CBM wells, that is one for every seventy, or so, acres, with expanded development ongoing. Westmoreland County has about 30 wells and, according to newspaper reports, is slated to get about 250 more over the next two years. Development has begun in a big way in Cambria County. Also, Fayette, Greene and Washington Counties have substantial and increasing coalbed methane field construction. This is not an isolated issue. Coalbed methane development will eventually impact every part of Pennsylvania where coal is found.

Every form of development impacts the land, and every form of development faces its naysayers and condemnation. Both agriculture and mining, the corner stones of strong economy, must continually fight battles

against those who make an industry of complaint and who claim they would rather the world did not change, while they quietly bask in the advantages brought on by that change. But the complaints of Pennsylvania's farmers and landowners are real, not trivial, and they need to be resolved.

The situation is out of balance. Due to an inequality in the law, CBM development forges ahead while farmers and landowners are forced to suffer. From reduced property values and lower farm productivity, to weakened pride of ownership and an erosion of confidence in our governing bodies, coalbed methane development poses a threat to agriculture. Let us quickly correct this imbalance. Instead of alienating agriculture to benefit mining, let us ally agriculture and mining to benefit the whole state.

The solution is simple, and it is already in place within the surface coal mining industry of Pennsylvania. It is called "contractual consent," by which the coal owner is required to obtain the permission of the landowner before mining coal.

Contractual consent was the outcome of a 1953, Pennsylvania Supreme Court decision known as the *Duricka* case, in which coal owners who wanted to extract coal by surface mining were, first, required to obtain permission from the landowner. These requirements were incorporated into Pennsylvania Code, Title 25 § 86.64, "Right of Entry." This provision requires that coal developers obtain a signed "Contractual Consent of Landowner," before mining.

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

Contractual consent has environmental benefits as well. Farmers are the stewards of the land. It is their inherent duty to nurture their particular tiny portion of the earth's surface, to keep it productive and to earn a sustainable living from it. No one is better suited to decide what is the right and proper use for that property. A CBM developer who seeks to put a pipeline through a rocky pasture is certainly going to cause less damage to that farmer's

livelihood than if the developer put a pipeline through the farmer's best field. Let the farmer decide.

What would happen if a headstrong landowner refused entry to CBM developers? Most farms in Pennsylvania are relatively small, 130 acres on average. The developer could move on, or using the techniques of horizontal or slant drilling, the coal under such properties could be accessed from a nearby property where the landowner may be happy to negotiate a consent contract with the developer.

Some have argued that a special board of arbitration should decide where wells, access roads and pipelines are located and how much the landowner should be paid for the land. This recommendation ultimately denies the farmer's authority to negotiate. Without the authority to refuse entry, a farmer or landowner has no real determination in the disposition of his or her property. A non-negotiated agreement is, by its nature, no agreement at all; it is instead an ultimatum. We entrust our farmers with the daily decisions which ultimately feed the hungry world, let us not deny their judgment on CBM.

Others say that damage to the surface is less drastic in CBM development than in strip mining, and correspondingly the landowner's control in this situation should be reduced. In terms of compensation, the landowner's demands should be in keeping with the damage that CBM development causes. Again, farmers as a group are not unreasonable. The compensation for land damage and speculation of the long term economic impact upon the farmer should be judged by that farmer in agreement with the CBM developer. Certainly, where the negative impact of development is reduced, the compensation to the farmer should be less, but the fairness and authority by which that compensation is calculated should not be reduced.

Another argument says that "contractual consent" has hurt the mining industry and, therefore, should not be extended to CBM where it would cause the same sort of damage. If it is true that "contractual consent" has hurt the mining industry, then why hasn't the legislature repealed the law? Contractual consent serves to strike a much needed balance between the rights and needs of the farmer and the potential harm caused by mining. We have had more than a quarter of a century of contractual consent in surface mining, and during that time mining has continued, the health of our fields, forests and streams has improved and farmers have shared in both the costs

as well as the benefits of surface mining. As a consequence, Pennsylvania has seen no need to amend or repeal the standing "contractual consent" law.

While it may seem politically safer to endorse the status quo and do nothing, legislative inactivity on the CBM issue will ultimately result in lost revenue, lost jobs, lost business potential, and reduced homeland security. Legal disputes will bog down in our courts, and every proposed well will become a new source of landowner resentment toward CBM developers. In the mean time, other states will leap ahead and reap the benefits of the ready and cheap CBM resource.

As Antonette Markowski, of the Department of Conservation and Natural Resources, points out in her exhaustively researched book on coalbed methane, "In Pennsylvania, ... unresolved ownership questions coupled with multiple land situations have hindered the commercial development of CBM." Let us acknowledge the accuracy of Ms. Markowski's statement and move to make the changes that will give stability and fairness to both industries impacted by CBM development.

Legislative inactivity poses a barrier to a better future for Pennsylvania. In his testimony to the Joint Legislative Air and Water Pollution Control and Conservation Committee in Blairsville, Indiana County, on February 28, 2003, mineral law expert from the University of Pittsburgh, Dr. Cyril Fox, stated, "[This] is a legislative rather than a judicial question. It needs and should promptly receive the interposition of the legislative authority."

Twenty-four years after the *Hoge* case was decided, we are still trying to resolve issues surrounding that court decision. If we wait for the courts to clarify this issue, we will wait indefinitely. Court decisions are by nature uncertain, they depend upon the specific nature of each case, they are time consuming and they place an economic burden upon the parties involved, who, in the case of our farmers, may or may not have the financial wherewithal to see the case through. Because of these obstacles, Dr. Fox recommended legislative rather than judicial action.

Now it is May, 2007; isn't it time to take Dr. Fox's advice? The farmers and landowners of Pennsylvania urge the legislature to enact a law which requires CBM developers to obtain the consent of the landowner prior to entering upon private property. When farmers and landowners once again control the fate of their properties they will most assuredly welcome CBM

development. The economic benefits will accrue to farmers and developers alike. I urge Pennsylvania's legislators to restore the balance between the two most important industries in this state; protect our farmers while promoting the mining industry's CBM development.