AOPA COMMITTEE OF THE
NATURAL RESOURCES COMMISSION

Meeting Minutes of January 10, 2012

MEMBERS PRESENT

Jane Ann Stautz, Chair
Mark Ahearn
Doug Grant
R. T. Green

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Debbie Freije

Call to order and introductions

Jane Ann Stautz called the meeting to order at 8:41 a.m., EST on January 10, 2012 in the Lawrence Room of The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of four members, the Chair observed a quorum. The AOPA Committee members introduced themselves.

The Chair explained the morning portion of the meeting would be dedicated to hearing oral argument in *Hoosier Energy Rural Electrical Cooperative v. DNR and L.C. Neely Drilling* with a recess by 10:00 a.m. The AOPA Committee meeting would then reconvene at 1:00 p.m. to hear oral argument in *Williams v. DNR and Countrymark Energy Resources, LLC.*

Consideration and approval of minutes for meeting held on September 20, 2011

Doug Grant moved to approve the minutes of the meeting held on September 20, 2011 as presented. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order in the Matter of *Hoosier Energy Rural Electrical Cooperative, Inc. v. DNR and L.C. Neely Drilling, Inc.*, Administrative Cause No. 11-061G

Sandra Jensen, Administrative Law Judge, provided a clarification regarding amendments and corrections to the findings of fact and the nonfinal order. She said Terri Czajka represented Hoosier Energy Rural Electrical Cooperative ("Hoosier Energy") during previous stages of the proceeding, but Eric Johnson appeared on behalf of Hoosier Energy for the oral argument.

Jensen indicated the parties were informed of proposed revisions to the findings of fact and nonfinal order. The parties "all indicated their understanding of these revisions and their agreement that these revisions are appropriate and necessary". Jensen said with the revisions, Finding 16 and Finding 25 would read as follows:

> 16. Subsequent to the execution of the Maverick Lease, Hoosier became the successor in title to the property, including the surface and coal estates, that are subject to the Maverick Lease and upon which wells associated with the Permits are proposed to be located.
>
> 25. Hoosier, as a successor in title to the property subject to the Maverick Lease accepted ownership of that property subject to the terms of the Maverick Lease and thereby consented to the issuance of the permits and Neely's extraction of coal bed methane from the property as specified at I.C. 14-37-4-1(c) such that Hoosier's consent renders the prohibitions established at I.C. 14-37-4-1(b)(1 – 2) inapplicable to the issuance the Permits.

R. T. Green asked whether a motion was appropriate to approve the amendments to these Findings.

The Chair said a motion would be appropriate. "We will then have the oral argument on these proposed revisions as agreed by the parties."

Green moved to adopt the revisions to Findings 16 and 25 as presented by Judge Jensen. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Eric Johnson, representing Hoosier Energy, said the permits at issue were applied for and issued during a relatively narrow time-period when the Indiana General Assembly had a "coal bed methane moratorium in place." The moratorium prohibited the issuance of permits for the extraction of coal bed methane with certain exceptions, and the exception at issue before the AOPA Committee is by "the consent of the coal owner". He said under the nonfinal order, the administrative law judge determined the permits were for the extraction of coal bed methane and would typically be subject to the moratorium statute. But because Judge Jensen further found that Hoosier had consented to the extraction based on a 2003 coal bed methane lease, she concluded the issuances of the permits in this case were not prohibited.

Johnson said Hoosier Energy disagrees with the consent finding for a few reasons. "First, under the moratorium statute, consent has to be to (a) the extraction, and (b) the permit itself." The 2003 coal bed methane lease does not give consent to the issuance of the permit. "Giving those words their plain meaning, there is no reference in the 2003 lease to the 2010 permit."

Johnson raised a second argument. He said "consent" is not a defined term under the moratorium statute but is defined by subsequent legislation. "The 2003 coal bed methane lease should not be consent under the 2010 moratorium statute, because obviously it didn't contemplate the moratorium." A determination that "consent is always found under the very general production language of the coal bed methane lease" would "have eviscerated the moratorium." He said the language in the lease is general and authorized production, drilling,

and permitting, "very much like all the other lease terms that you've seen in every other oil and gas lease that you've looked at. It's general production rights." To find this general lease language consents to coal bed methane extraction "would cut a hard swath through the moratorium applicability."

Johnson continued. "We do know something of what the legislature meant by 'consent' based on the new scheme" in 2011 amendments to the 2010 moratorium statue at issue. Under the new structure, "consent" requires a specific instrument by the coal owner that recognizes there could be "damage to or waste of" the commercially minable coal resources. The 2003 lease does not contain language referencing potential damage to the commercially minable coal, and there are no factual showings there would not be "waste" to the commercially minable coal resource. Under the 2011 amendments, the 2003 lease could not constitute consent. A determination the 2003 lease constitutes consent would cause Maverick's ability to obtain a permit under the 2010 moratorium statute easier than following the 2011 amendments which require a factual showing regarding waste of a commercially minable resource.

John Buthod, representing L.C. Neely Drilling, Inc. ("Neely"), said the 2010 legislation did not apply if the owner of the coal estate expressly consented to the extraction of coal bed methane. "This legislation was enacted largely in response to the ongoing and growing controversy between the owners of the coal rights and the owners of oil and gas leases." The controversy is centered on the applicability of terms in an oil and gas lease which give the lease owner a right to explore for, produce, and sell oil and gas. "In the vast majority of these leases, there is no specific reference made to 'coal bed methane' for the simple reason that coal bed methane, until very recently, was not commercially viable." In more recent years, coal bed methane has become commercially viable, so some lease owners concluded their oil and gas leases give them the right to produce coal bed methane by virtue of their grant to produce oil and gas.

Buthod acknowledged coal bed methane gas differs from the type of gas contemplated under a typical oil and gas lease. The 2010 moratorium legislation was enacted to protect coal owners who were deemed to be the owners of the rights to the coal bed methane unless the coal owner had consented to the extraction and to the issuance of the permit. In the case being argued today, Neely's lease "was very specific and was for the exclusive purpose of producing coal bed methane gas and was entitled 'Coal Bed Gas Option Lease'." The terms of the lease "clearly authorized, granted, agreed to, consented, if you will, to the extraction of coal bed methane and to numerous other activities related to that, which may be necessary to effectuate the purposes of the lease, mainly to extract coal bed methane."

According to Buthod, the Department of Natural Resources (the "Department") determined the statutory consent was fulfilled by the terms of the lease, and it issued the permits. On administrative review, the lease language was again determined to constitute the necessary consent "to exclude these permits from application of the moratorium statute." The moratorium statute only requires consent to the extraction of coal bed methane, which Buthod argued was "clearly provided in the terms of the lease." He said Hoosier Energy does not maintain the lease terms did not provide consent to extract coal bed methane before the effective date of the moratorium, but contends the previously valid consent "was no longer effective" after the moratorium. There is nothing in the statute that attempts to invalidate prior consent or requires

consent to be received after the moratorium. Buthod urged the claim "was baseless" that the previously valid consent was rendered ineffective by the moratorium. He quoted from memory a finding from the nonfinal order: "There is no logical reason and no identifiable legal support for the proposition that the consent, which was effective before the effective date of the moratorium, is any less effective after the effective date of the moratorium." In response to Hoosier Energy's claim the consent provided in the 2003 lease was not the statutory "requisite consent", he again noted the 2003 lease provides consent to both the extraction of the coal bed methane, as well as to the issuance of the permit in an instrument that is undisputedly binding upon the parties.

Buthod stated Hoosier Energy is seeking to have all the additional notices, requirements, restrictions, waiting periods, and other provisions of the 2011 statute "read into" the 2010 moratorium statute in order to find valid consent. The issuance of these permits was controlled by the 2010 moratorium statute. He urged the 2011 statutory amendment "is inapplicable to and has no bearing on the interpretation of the 2010 moratorium."

R.T. Green inquired whether Hoosier Energy completed the necessary due diligence and discussed the lease terms with respect to the coal bed methane when it purchased the property subject to the lease. Johnson responded Hoosier Energy was aware of the lease terms when it purchased the property. Buthod and Johnson agreed the lease was "of record" at the time of Hoosier Energy's purchase, which Johnson believed occurred in approximately 2008.

Green further inquired, "Did Hoosier just buy it as a coal store, in case they need additional coal…, or were they going to expand the plant?" Johnson responded there were aquifers underlying the property that are "used for water supply to the power plants" in addition to the coal resource. He said he did not believe Hoosier Energy was planning construction on the site.

Doug Grant and Green sought confirmation there were no factual disputes and this case was appropriate for summary judgment from all perspectives. Johnson and Buthod responded in the affirmative.

Ihor Boyko, representing the Department, stated the agency did not file objections because the permits were upheld. The Department did not agree with the administrative law judge's conclusion "permits that were issued here were for the extraction of coal bed methane because the permits were specifically issued as geological or structural test wells." These are defined as "non-production wells" even though these types of wells are also defined as "wells for oil and gas purposes." He said the Department's position is Neely must "go through another procedure to convert these to production," and the 2011 amendment would apply to the process. In the agency's view, Hoosier Energy "is seeking retroactive application of the 2011 requirement to this permitting process." A generally accepted legal principle is a statute is applied prospectively unless the language in the statute indicates retroactive application is authorized.

Mark Ahearn sought to confirm that Johnson's reference to the definition in the 2011 statute was "illustrative or demonstrative" as opposed to "precedential or controlling." Johnson responded Ahearn was correct in his understanding.

Ahearn asked Buthod, "What are the stakes in this" if the AOPA Committee and possibly subsequent courts "uphold Hoosier's position" that the language of this lease is insufficient to comply with the 2010 requirements? "How do we leave the law when we're finished?"

Buthod responded the stakes apply to four permits, and Neely does not "challenge the fact that the 2011 law controls going forward." He said he believed this matter relates solely to those four permits, and the state of the law for the future would be what the "2011 amendments provide".

Johnson agreed and said what is at issue is in very narrow window and involves what "consent" means under the 2010 moratorium.

Ahearn asked whether there were other applicants for permits during the time of the 2010 moratorium.

Boyko responded these were the only permits issued during the moratorium period that were contested, "although there may have been others issued."

Ahearn continued, "What is the fight about?"

Buthod responded, "Hoosier Energy may want to produce this coal bed methane themselves, and they are trying to disavow an existing lease."

Ahearn observed the 2010 statute appears to be an "intervening event that is either applicable to all the leases that had some language of permit before or it's not."

Buthod responded the statute is expressly inapplicable to leases if the owner of the coal consents specifically to the extraction of coal bed methane.

The Chair observed, "That goes back to the language of the lease and how explicit it is in the lease because in some general terms they did not anticipate."

Buthod agreed that, under a general oil and gas lease, who has the right to produce coal bed methane may be unclear. But the facts here are "totally different" because the lease is directed to coal bed methane, and "there is no other purpose for the lease except to extract coal bed methane."

Johnson agreed that under the lease, "extraction of coal bed methane was permitted…. That was a right given under the lease." But he urged the "idea of consent" should not be blurred with the "idea of rights". The 2010 moratorium "altered the balance of rights between coal bed methane producers and owners of the coal estate" and required a pause in the production of coal bed methane "unless there is consent." He emphasized a right granted under a lease is not the equivalent of consent. The 2010 moratorium statute requires "consent to the issuance of the permit", as opposed to "issuance of permits" in a general sense.

Buthod responded the purpose for the consent requirement was to ensure coal bed methane was not produced without the knowledge of the owner of the coal estate. But it is unnecessary that

the consent apply to a specific permit. The 2003 lease "expressly granted, authorized, consented to extraction of coal bed methane, which is required under the statute, and to the issuance of the necessary permits and many other activities necessary to carry out the purposes of that lease." Buthod added, "The moratorium simply does not apply by its own terms to situations where there is consent."

Green asked for the DNR's position if the nonfinal order is affirmed and upheld, then Neely begins extracting coal bed methane, "in light of the Department's position that these permits are only for exploratory purposes and not extraction?"

Boyko responded the permit only authorizes testing and exploration, "so actual production of coal bed methane would be a violation of the permit." He said Neely could make application "to convert the structural test permit to a production permit."

Green inquired whether conversion of the structural test permit to a production permit would be reviewed under the 2011 statutory amendments. Boyko responded, "Yes, I believe we would have to follow the new requirements effective in 2011 if that were to happen."

Buthod agreed no production or extraction could be conducted without converting the permit. But he expressly withheld a legal opinion as to which statute would apply to an application to convert the permit.

Ahearn reflected, "This strikes me as a close to perfect summary judgment question." He offered for discussion the suggestion that "we modify the order such that it takes the position that the 2003 lease in question, in terms of consent to the issuance of the permit, does not meet the 2010 statute definition of consent." He said a decision should be made narrowly and be based solely on the language of the lease at issue. He said he believed the lease language did not grant the type of consent required by the 2010 moratorium statute. Ahearn said he agreed with Johnson as to the distinction between "rights" and "consent".

To accomplish his suggested modification, Ahearn said everything after the term "Maverick Lease" should be removed from the revised Finding 25. Findings 42 through 62 would be deleted because the discussion of "extraction" and "production" make the order "more complex than is necessary to dispose of the issues."

Green stated, "I don't agree."

Jensen added that "this case, as it came to me, was not limited to the issue of 'consent'. As the case came to me, the issue of whether 'extraction' is the same thing as 'production' is critical." She said she would not comment on the suggested modification of Finding 25 or the ultimate decision regarding the consent issue, but she believed the removal of Finding 42 through 62 would render the decision incomplete.

Ahearn questioned why none of the parties referenced matters pertaining to the "extraction versus production issue?"

Buthod responded the oral argument related solely to the objections filed by Hoosier Energy. These objections were directed exclusively to the consent issue.

Johnson said the parties filed cross-motions for summary judgment on the other issues referenced in the nonfinal order. He confirmed Hoosier Energy's only objection to the nonfinal order related to the consent issue.

Ahearn expressed concern that a grant of authority to obtain permits to carry out the purposes specified in a lease, which he inferred would be a fairly standard lease provision, would overcome the 2010 moratorium.

Buthod responded the Maverick Lease was "unique in that it is a lease specifically for the extraction of coal bed methane" and was not a general oil and gas lease. He agreed the 2010 moratorium statute required consent to place the property owner on specific notice that what was being extracted was coal bed methane gas. If the Maverick Lease were a standard lease for oil and gas extraction, the consent would be insufficient. But Buthod reiterated the Maverick Lease was solely for extraction of coal bed methane as distinguished from a typical oil and gas lease.

Stautz stated, "As I read the lease, it anticipated CBM exploration and eventual extraction or production…. I took it for the title. I took it for the content." She questioned what additional consent would be required.

Green added Hoosier Energy and Neely were business ventures that "understood what was going on." If this situation occurred in 2008 before the effective date of the 2010 moratorium, "we would not be here." Requiring additional consent beyond what is already in the lease would amount to a retroactive application of the 2010 moratorium. "I think it has to stand on what it was at the time." To do otherwise could be construed as a "taking".

Johnson urged the 2010 moratorium statute changed the rights of Hoosier Energy and Neely. The legislation contains a "prospective consent requirement that says 'its consent' to the extraction of coal bed methane and 'the issuance of the permit'."

Ahearn asked Buthod what the Indiana "General Assembly meant by the language of the double consent—to the extraction and to the issuance of the permit."

Buthod responded, "I think they wanted to make it clear that the State was not going to issue permits in the absence of a landowner's consent."

Ahearn reflected, "In the context of a statute that is about a moratorium…, this is about blowing the whistle, saying 'stop', and then saying 'but this is how you can proceed.' I don't believe I read that by saying, 'The existing permits you had are all okay.'"

Buthod responded, "The moratorium does not say, 'The moratorium applies until you do this.' It says, 'It does not apply if you have consent.' So, it's not a stop, now go. It's a 'this doesn't apply.'"

Johnson responded, "I guess I would actually disagree, because it says 'unless the owner of the right to coal under this chapter consents.'" He continued, "it is a prospective 'consents' rather than 'has consented'."

Jane Ann Stautz said she understood the "rights and concern of landowners who may not have anticipated the extraction or production of CBM wells, and I understand the legislature's intent to protect that by issuing a moratorium on that. So, in my mind I differentiate the circumstances here where there was a lease, that as I read it…, that was the intent. It was designed for extraction and production wells for CBM."

Johnson said the purpose of the moratorium was not to differentiate general oil and gas production from coal bed methane production. "The production of coal bed methane damages the coal estate. By the fracking of the coal seams, it damages the coal estate, sometimes both on the property at issue and on neighboring properties." He highlighted portions of the 2011 statute that he said are specifically designed to protect the coal estate. The moratorium "is not about balancing the rights of oil and gas owners versus coal bed methane owners. It's about balancing the rights of coal bed methane owners with the coal estate…the underlying coal estate that could be damaged." Johnson concluded the legislative intent of the moratorium was "to prevent the waste of a commercially mineable coal resource."

Ahearn reasoned "the 2010 statute is disruptive to the normal course of business in the industry, and I think the General Assembly intended it to be." The legislature intended to "change the playing field." For permits to go forward, it required the consent of the coal interest.

Buthod responded, if the lease conveys the right to produce coal bed methane and apply for permits and take other action necessary to carry out the lease terms, "to say that those rights are conveyed but the owner has not consented doesn't make sense. To say that the 2010 statute requires something more than that…requires the owner to say, 'Yes, I gave you the lease. I consented to the extraction of CBM according to the issuance of permits.' And now I'm coming back and saying, 'I really meant it when I said it the first time.'" To require a second consent gives "the underlying coal owner the right to disavow that lease if that's the way it's going to be applied but it doesn't give them any more rights." Buthod said to allow the owner of the coal estate to go back and renounce the previously given consent would be an inaccurate and unfair reading of the statute.

R. T. Green moved to "accept the administrative law judge's nonfinal order…." Doug Grant seconded the motion. The motion carried with three in favor and Mark Ahearn opposed. The nonfinal order was approved with the amendments made previously by the Committee.

Recess

At approximately 9:50 a.m., the Chair recessed the meeting and reported the Committee was scheduled to reconvene in the same location at 1:00 p.m., EST.

Reconvene

Jane Stautz reconvened the meeting at 1:02 p.m. in the Lawrence Room of The Garrison. With the presence of four members, the Chair observed a quorum. The Committee members briefly reintroduced themselves.

Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order in the Matter of *Williams v. DNR and Countrymark Energy Resources, LLC*, Administrative Cause No. 10-198G

Sandra Jensen, Administrative Law Judge, summarized the issues. She said Countrymark Energy Resources, LLC ("Countrymark") submitted an application for the mandatory integration of petroleum production interests, seeking to have the Department of Natural Resources ("Department") order real property owned by Gary Williams ("Williams") and another owner who is not a party, included within a drilling unit. Williams had previously refused to enter into an oil and gas lease with Countrymark. The Department issued an order integrating the interests of Williams into the drilling unit on October 28, 2010, and Williams sought administrative review. Oral argument results from objections filed by Williams following issuance of a nonfinal order affirming the Department's order of integration.

Jensen clarified Williams made statements in his objections that were beyond the scope of the evidence placed in the record during the administrative hearing. She noted particularly the subject matter of Finding 39(a) and Finding 41 was included in the record of the administrative hearing, but the written objections provide additional detail that was not in the record.

Gary Williams said the Integration Order did not consider the implications of the evidence, and, as a result, did not meet the statutory requirement that an Integration Order contain reasonable terms and provide for equitable shares in the proceeds of the oil recovered. He contended the majority of the oil Countrymark is seeking is located beneath his real property. He explained the proposed bore path of the planned horizontal well, which is expected to progress directly under his property, is evidence where Countrymark believes the greatest oil reserve is located. He urged the electric logs, which were described by Countrymark's witnesses as being "critical to" the location of the oil reserves and the bore path, also reflect the majority of the oil expected to be recovered is beneath his property. The electric logs were derived from oil wells drilled in 2007 through 2008 in the present location of the oil reserve, and not in the original location as the administrative law judge determined. He expressed a general understanding of the "rule of capture" set forth in the *Ohio Oil* case over 100 years ago. Williams urged the Committee to "reconsider this rule" in light of new technology that allows "underground visibility" and a more accurate determination of actual oil reserve locations. In light of new technology and scientific understanding, the "constitutionality of the capture law must be reconsidered."

Williams said the drilling unit at issue includes two 40-acre parcels, one referred to as the "Midway Parcel", where his property is located, and the second referred to as the "Muellenbein Parcel". He contended the oil reserves associated with the Muellenbein Parcel were depleted through years of oil production dating back into the 1950s. Williams referred to testimony received at hearing from a Countrymark witness that the most recent oil production associated with the Muellenbein Parcel in the 1980s, ranged from two to three barrels per day. He observed the bore path for the horizontal well proposed by Countrymark would extend only approximately

25 to 50 feet onto the Muellenbein Parcel, with a trajectory directly into the Midway Parcel, from which Williams inferred the oil to be produced is located predominantly, if not solely, within the Midway Parcel. Williams stated, "the owner of the Muellenbein Parcel has already benefitted" observing that the inclusion of the Muellenbein Parcel into the drilling unit with the Midway Parcel artificially decreases the pro-rata compensation to the owners within the Midway Parcel.

Williams claimed the leases held by Countrymark were obtained "by fraud". He observed the Department may revoke a permit obtained by fraud under I.C. 14-37-13-1. The other landowners within the Midway Parcel signed leases based upon an understanding the drilling unit would consist of 40 acres. He referred to a letter sent to the Wheelers, the other landowner who did not sign a lease with Countrymark.

Jensen noted the letter sent to the Wheelers was not offered into evidence at the administrative hearing and was not part of the official record.

Williams said his property ownership applies to the subsurface as well as to the surface. He urged Countrymark's activities were the equivalent of criminal trespass because the bore path originally proposed would traverse the subsurface of his real estate.

Finally, Williams maintained the oil to be produced by Countrymark was not being produced for the "public use" but was instead for the private benefit of Countrymark. This production would amount to a "taking" in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

Verner Partenheimer represented Countrymark and said he would restrict his comments to the points raised in sections a.3 and c. of paragraph 16 of the nonfinal order. Partenheimer displayed enlarged copies of Stipulated Exhibit 1(Document 4) and Respondents Exhibit 6, Electric Resistivity Log, to aid his presentation. He also provided the Committee members with an enlargement of the legend contained within Respondent's Exhibit 6 that identified the three wells used for the development of the Electric Resistivity Log. He said the nonfinal order correctly determined the wells used for developing the Electric Resistivity Logs were drilled in the 1950s. The Ford wells referred to by Williams, and that were drilled in 2007 and 2008, were horizontal wells for which "resistivity logs have never been run."

Partenheimer pointed out the Notice of Informal Hearing on Countrymark's application for the Integration Order which the Department provided to Williams. The Notice advised of the "default option", which the Department would select absent Williams' presentation of evidence, would award a $1/8^{th}$ royalty share of the net production. Under this option, Williams would not be responsible for any costs or fees associated with Countrymark's drilling or well operation. The awarded royalty payment was consistent with the requirements established at I.C. 14-37-9-2.

Partenheimer said Williams' arguments "have morphed over time." During the Department's informal hearing and during the prehearing conference in this proceeding, Williams did not claim he should receive a greater portion of the proceeds because a greater oil reserve existed beneath his real property. Williams' earlier position was to seek compensation for speculative damage to his water well.

Partenheimer said Findings 41 through 43 and Finding 63 are supported by the testimony of David Sawyer, Countrymark's Production Engineer. Despite Williams' contentions, there is nothing contained within the record to suggest when the water flooding ceased. See Finding 39. He is merely stating his lay opinion "in contest to expert geologists." Williams "has simply failed to establish his entitlement to any greater royalty than any other landowner."

Green asked whether Williams could simply drill his own well.

Partenheimer responded that, by law, Williams would only be able to drill a well by combining his interests with other property owners to create a ten-acre drilling unit.

Ihor Boyko represented the Department. He said the agency required the addition of 20 acres in the southwest corner of the Midway Parcel because to do otherwise would result in "orphaning that 20 acre parcel of property, a result the Department is to avoid. Boyko acknowledged a consensus between the parties that an apparent "hot spot" exists beneath Williams' property, but he said there was no evidence as to "recoverable oil attributed" to this location. As a *pro se* litigant, he probably did his best, but Williams "simply failed to bear his burden of proof."

Boyko said the fraud issue was "not raised below". It's inappropriate for Williams "to raise fraud for the first time during oral argument on objections." He did not sign a lease, so he could not have been defrauded by the lease. Williams was an improper person to raise fraud on behalf of the Wheelers or any other person who signed the lease.

Jensen confirmed there were no parties to this proceeding who had signed the lease Williams referred to in his oral argument who could have alleged fraud with respect to obtaining that lease.

Green asked Boyko if Williams could establish a "consortium of his own and drill his own well"?

Boyko responded he could. But Williams would have to have at least ten acres under control to drill a well for oil and gas purposes.

Grant sought clarification as to where Williams claimed oil reserves were depleted.

Boyko responded Williams contends the Muellenbein Parcel is depleted, but the evidence contradicts his contention. One well on the Muellenbein Parcel is producing two to three barrels of oil per day.

Williams offered Respondents Exhibit I-3B1explaining that the "hottest" colors, (i.e., white and yellow) identify areas of highest oil concentrations. Williams located his real property on the diagram and pointed out the yellow colorization there.

Partenheimer responded with respect to Exhibit I-3B1 that the oil concentrations depicted are based upon the Electric Resistivity Logs using data from wells drilled in the 1950s. The oil field has also been "water flooded" since the data was collected.

Green stated his opinion that "everything is above board" in moving to approve the administrative law judge's nonfinal order. Ahearn seconded the motion stating, "The law and facts tend to weigh against" Williams. On voice vote the motion carried, and the nonfinal order was affirmed without revision.

Adjourn

The meeting adjourned at approximately 1:56 p.m., EST.