

**COMMONWEALTH OF PENNSYLVANIA**

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**THE STATE BOARD OF PROPERTY**

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**DEER RIDGE LODGE,  
Plaintiff**

**v.**

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES,  
Defendant**

**DOCKET NO. BP-2011-0001**

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**FINAL ADJUDICATION AND ORDER**

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**Karen L. Cummings, Esquire, designee of the  
Secretary of the Commonwealth, Chairman**

**Christopher C. Houston, Esquire, designee of the  
Secretary of Community and Economic Development**

**Gretchen Wischart, Esquire, designee of the  
General Counsel**

**Department of Community and Economic Development  
Commonwealth Keystone Building  
400 North Street, 400 Plaza Level  
Harrisburg, PA 17120**

**TAB**

## HISTORY

This matter comes before the State Board of Property (Board) to determine ownership of certain real estate within this Commonwealth otherwise claimed by the Commonwealth pursuant to section 1207 of the Administrative Code of 1929, 71 P.S. § 337. By complaint in action to quiet title filed on February 22, 2010, Deer Ridge Lodge (Plaintiff) sought to quiet title in certain real estate situate in Bloom Township, Clearfield County. On May 25, 2011, the Department of Conservation and Natural Resources (Commonwealth) filed an answer with new matter. Plaintiff filed its reply to the new matter on October 20, 2011.

On May 30, 2012, the Commonwealth filed a motion for summary judgment, and Plaintiff filed a response to the motion on June 27, 2012. The Commonwealth filed its supporting brief on October 12, 2012, and Plaintiff filed its opposition brief on December 6, 2012. Upon motion of Plaintiff filed on September 16, 2011, the Board – comprised of chairman Karen L. Cummings, Esquire (designee of the Secretary of the Commonwealth), Christopher C. Houston, Esquire (designee of the Secretary of Community and Economic Development), and Gretchen Wischart, Esquire (designee of the General Counsel), along with then Board counsel Joyce McKeever, Esquire – heard oral argument on October 24, 2013. Martha R. Smith, Esquire, represented the Commonwealth, and David E. Holland, Esquire, represented Plaintiff. On February 7, 2013, the parties filed a joint stipulation of facts not in dispute.

The Board deliberated this matter at its meetings November 17, 2014, and December 12, 2014, and now issues this adjudication and order as a final determination of Plaintiff's compliant.

## FINDINGS OF FACT

1. Plaintiff is Deer Ridge Lodge, a Pennsylvania non-profit corporation with a current address of 160 RB Contracting Lane, Curwensville, Pennsylvania 16833. (Stipulation of Fact ¶ 1).

2. Defendant is the Commonwealth of Pennsylvania, Department of Conservation and Natural Resources, with an address of 400 Market Street, 7<sup>th</sup> Floor RCSOB, Harrisburg, PA 17105. The Department of Forests and Waters later became the Department of Environmental Resources and, in 1995, all State Park and State Forest lands came under the ownership and jurisdiction of a newly created department, DCNR. (Stipulation of Fact ¶ 2).

3. Plaintiff purchased certain property by Deed dated February 27, 2001 and recorded February 27, 2001 in the Office of Recorder of Deeds of Clearfield County as Instrument No. 200102867. A copy of that deed is attached to Plaintiff's Complaint as Exhibit A. (Stipulation of Fact ¶ 3).

4. By virtue of that Deed, Plaintiff acquired title to two parcels of land, the first parcel containing approximately 476 acres of land and the second parcel containing approximately 310 acres of land. (Stipulation of Fact ¶ 4).

5. As to the first parcel, a chain of title exists extending back to a Warrant dated September 6, 1856, with a return of survey dated December 18, 1856, and a Patent being issued to George Dock and E.G. Rehrer by the Commonwealth of Pennsylvania dated December 16, 1860 set forth in Patent Book H-53-273. A copy of the survey and patent are attached to Plaintiff's Complaint as Exhibits B and C. (Stipulation of Fact ¶ 5).

6. As to the second parcel, a chain of title extending back to a Warrant dated

September 2, 1839, with a return survey date of September 14, 1839 and a Patent being issued to J.W. Smith by the Commonwealth of Pennsylvania dated September 14, 1839 set forth in Patent Book H-41 -312. A copy of the survey and patent are attached to Plaintiff's Complaint as Exhibits D and E. (Stipulation of Fact ¶ 6).

7. DCNR claims title to the Disputed Parcel located in Bloom Township, Clearfield County, identified as consisting of 193 acres, 22 perches and the allowance of six per cent, by virtue of its 1923 patent from the Commonwealth of Pennsylvania. (Stipulation of Fact ¶ 7).

8. DCNR claims that the Disputed Parcel is immediately to the west of the George Dock and E.G. Rehrer Warrant and the J.W. Smith Warrant. Plaintiff claims that the patents issued in 1839 and 1856 to Plaintiff's predecessors-in-title include the Disputed Parcel. (Stipulation of Fact ¶ 8).

9. An Application for Warrant for Unimproved Vacant Land was filed with the Commonwealth land office by James M. Edwards on December 16, 1905 for 400 acres of land in Bloom Township, Clearfield County. A copy of the Application reproduced from the Pennsylvania Historical and Museum Commission, Pennsylvania State Archives (Archives) was attached to DCNR's New Matter as DCNR Exhibit A. (Stipulation of Fact ¶ 9).

10. This Application was for a vacant tract of land bounded on the north by Warrant 4252, on the east by lands warranted to Dock and Rehrer, and Smith, on the south by Warrant 5926, and on the west by Warrants 3590 and 3579. Plaintiff agrees that the Application was made, but claims the Disputed Parcel, and claims that the patents issued to its predecessors-in-title in 1839 and 1856 extend to the eastern boundaries of Warrants 3590 and 3579. (Stipulation of Fact ¶ 10).

11. On January 16, 1906, the Secretary of Internal Affairs issued a "report of the investigation as to the vacancy of the land applied for in the above named application [of James M. Edwards]." Although no survey was yet conducted, this report determined that a vacancy did exist and that a warrant should be granted to James Edwards for the land applied for. A copy of that written report, together with the attachments identified by the Secretary as the connected draft and a report by Surveyor W.A. Moore, reproduced from the Archives, is attached to DCNR's New Matter as Exhibit B. (Stipulation of Fact ¶ 11).

12. On January 19, 1906, the Department of Internal Affairs, Land Office Bureau, notified the State Forestry Reservation Commission of that Application for 400 acres, giving Forestry the option to acquire that tract. A copy of that notice is attached to DCNR's New Matter as DCNR Exhibit C. (Stipulation of Fact ¶ 12).

13. On February 2, 1906, the State Forestry Reservation Commission accepted the option to acquire that tract of 400 acres. A copy of that notice reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit D. (Stipulation of Fact ¶ 13).

14. On February 6, 1906, a caveat to the issuance of a Warrant was filed by the Samuel Arnold Estate. A copy of that caveat reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit E. A search of the Archives produced nothing further of record beyond the initial filing of the caveat, including the lack of a Board of Property decision regarding the caveat. (Stipulation of Fact ¶ 14).

15. The Samuel Arnold Estate is in Plaintiff's chain of title for both the Dock and Rehner and the Smith warrants, and was the owner of those tracts at the time of filing the caveat. (Stipulation of Fact ¶ 15).

16. On March 2, 1906, a Proof of Notice by Publication of Application for Warrant

to Survey Vacant Land for 400 acres was published in Clearfield County. The first notice had been published on January 24, 1906. A copy of that notice reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit F. (Stipulation of Fact ¶ 16).

17. A Warrant to Survey was issued by the Secretary of Internal Affairs to the State Forestry Reservation Commission on February 21, 1922 for 400 acres. A copy of that Warrant and related documents reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit G. (Stipulation of Fact ¶ 17).

18. This land was surveyed dated November 7, 1922 for 193 acres and 22 perches and allowances. A copy of that Return of Survey and related documents recorded as Survey Book D-92-86 reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit H. (Stipulation of Fact ¶ 18).

19. A patent was issued to the Department of Forests and Waters on June 19, 1923 in Patent Book H-78-384. A copy of that Patent reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit I. (Stipulation of Fact ¶ 19).

20. A copy of the Warrant Register, identifying the land now claimed by the Department of Forests and Waters, reproduced from Archives, is attached to DCNR's New Matter as DCNR Exhibit J. The record at issue is the last one on this Exhibit. (Stipulation of Fact ¶ 20).

21. An Application for Warrant for Unimproved Vacant Land for the same 400 acres in Bloom Township, Clearfield County, was filed by Joseph Thompson on February 14, 1922. A note with the Application states, "Same land as applied for by James M. Edwards and patented June 19, 1923 to Forests and Waters Com., Complete." Nothing more was done with this Application by the Department of Internal Affairs. A copy of that Application and

attachments reproduced from Archives is attached to DCNR's New Matter as DCNR Exhibit K. (Stipulation of Fact ¶ 21).

22. The Commonwealth of Pennsylvania filed a criminal action in the Court of Common Pleas of Clearfield County, Pennsylvania at No. 99-604-CRA and No. 99-605-CRA, in which it sought to prosecute the principals of plaintiff's predecessor-in-title for removing timber from the Disputed Parcel. (Stipulation of Fact ¶ 22).

23. The information was quashed and the criminal charges were dismissed by President Judge John K. Reilly, Jr., finding that the matter was "a boundary dispute and not a criminal prosecution." A true and correct copy of the Opinion and Order dated May 19, 2000, by President Judge Reilly was attached as Exhibit U to the Response of Plaintiff to the Motion for Summary Judgment. (Stipulation of Fact ¶ 23).

24. Although Plaintiff's combined two-parcel property is generally rectangular, the eastern border is longer than the parallel western border and the eastern portion of the southern border runs irregularly in a northwest to southeast direction. (*See*, Plaintiff's Supplemental Appendix B attached exhibit 19).

25. Plaintiff's deed recites that the first (northern) parcel is to run from a post in its northwest corner 183 perches generally east along its northern adjoiner to a post, formerly a maple, on the west line of its eastern adjoiner, then 452 perches generally south along its eastern adjoiner to a post, formerly a dead chestnut, then generally west along the former J.W. Smith parcel 183 perches to a post, formerly a dead chestnut, on the east line of its western adjoiner, and finally generally north along the western adjoiner 452 perches to the post at the point of beginning. (Complaint and answer at ¶¶ 4-5 and attached exhibit A).

26. Plaintiff's deed recites that the northern boundary of its second (southern) parcel

is to begin at a hemlock at the southeast corner and work irregularly northwest to a point marked by a hemlock and run west to a post in the east line of its western adjoiner, then generally north along the adjoiner 232 perches to a dead chestnut, then generally east 183 perches to a dead chestnut at the west line of its eastern adjoiner, then generally south along the eastern adjoiner 318.3 perches to the hemlock at the place of beginning. (Complaint and answer at ¶¶ 4-5 and attached exhibit A).

27. The J.W. Smith warrant for the southern parcel describes it as beginning at a hemlock, going generally north along the eastern adjoiner 318.3 perches to a dead chestnut, then generally west 183 perches to a dead chestnut, then generally south along the western adjoiner 280 perches to a beech tree, then generally east before going irregularly southeast to the hemlock at the place of beginning. (Plaintiff's Response to Motion for Summary Judgment tab exhibit E).

28. The 1836 Survey of the J.W. Smith (southern) tract shows the northern boundary to run 183 perches from one dead chestnut tree to another and the southern boundary to terminate to the west at a beech tree. (Plaintiff's Supplemental Appendix D).

29. The 1854 Survey of the G. Dock and E.G. Rehrer (northern) tract shows the southern boundary to run 183 perches from one dead chestnut tree to another and the northern boundary to run 183 perches from a post at a maple not found to another post. (Plaintiff's Supplemental Appendix E).

30. In 2002, Gary L. Thorp, PLS, surveyed the property for Plaintiff and determined that the western and eastern adjoiners are 3968.75 feet apart at the northern boundary of the first Dock & Rehrer (northern) parcel, 3956.21 feet apart at southern boundary of this parcel, and 3956.21 feet apart at the northern boundary of the J.W. Smith (southern) parcel. (Plaintiff's Supplemental Appendix B at 17-18).



31. The 1906 Report identifies a beech tree along the southern boundary of the J.W. Smith (southern) parcel at a point matching the distances described in the deed and a maple tree along the southern boundary extended to the western adjoiner. The 1906 Report also identifies dead chestnut trees along the line between the two parcels at the eastern adjoiner and at the point of the distance recited in the deed. The 1906 Report further identifies a maple with post not found along the northern boundary of the G. Dock & E.G. Rehrer (northern) parcel at the eastern adjoiner, a post along this boundary at the distance recited in the deed and a post along this boundary at the western adjoiner. (Answer and reply to new matter at ¶ 21 and attached exhibit B).

32. Mr. Thorp identified a post at the southwest corner of the northern adjoiner of the G. Dock parcel matching the call of the G. Dock & E.G. Rehrer warrant. (Plaintiff's Supplemental Appendix B at 29 ¶ 7).

33. Mr. Thorp identified a dead chestnut tree at the southwest corner of the G. Dock parcel matching the call of the J.W. Smith warrant and a dead chestnut tree at the southeast corner of the G. Dock parcel matching the call of the J.W. Smith warrant. (Plaintiff's Supplemental Appendix B at 29 ¶¶ 9, 14).

34. Kenneth C. Kane, an expert forester retained by Plaintiff, opined that a beech tree identified to him by Mr. Thorp as located at the southwest corner of the J.W. Smith parcel was over 200 years old and would have been there at the time of the original deed in 1836. (Plaintiff's Supplemental Appendix A).

35. Mr. Thorp has not specifically identified where this ancient beech tree is located. (See, Plaintiff's Supplemental Appendix B, Plaintiff's Response to Motion for Summary Judgment at tab 3).

36. Neither Mr. Kane nor Mr. Thorp has opined that at the time of the original deeds or warrants there was no beech tree along the southern boundary of the J.W. Smith parcel at the distance recited in the deed. (*See*, Plaintiff's Supplemental Appendices A and B).

37. As of 1999 there are no trees or posts along the southern boundary of the J.W. Smith parcel at a point matching the distances recited in Plaintiff's deed. (Plaintiff's Response to Motion for Summary Judgment tab 2 at 13, 56).

## CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter under section 1207 of the Administrative Code of 1929, 71 P.S. § 337.

2. The Commonwealth has established that there is no material fact in dispute and the Commonwealth is entitled to judgment as a matter of law that Plaintiff cannot establish ownership of the disputed property.

## DISCUSSION

Plaintiff brought this action to quiet title against the Department of Conservation and Natural Resources, a Commonwealth agency claiming the real estate. The Board has jurisdiction under section 1207 of the Administrative Code of 1929,<sup>1</sup> 71 P.S. § 337. *See, International Dev. Corp. v. Davidge*, 26 A.3d 1234 (Pa. Cmwlth. 2011) (Board of Property has exclusive jurisdiction to adjudicate action to quiet title to mineral estate where a Commonwealth agency owns and occupies the surface estate and asserts claim to mineral estate).

The Commonwealth has moved for summary judgment, arguing that Plaintiff, the party with the burden of proof, has failed to produce evidence or facts in its pleadings or its expert report essential to prove its cause of action. An administrative agency proceeding under the General Rules of Administrative Practice and Procedure may consider a motion for summary judgment under 1 Pa. Code § 35.54 (respondent may file a motion to dismiss a complaint because of lack of legal sufficiency appearing on the face of the complaint). *See, United Healthcare Benefits Trust v. Insurance Comm'r of Pa.*, 620 A.2d 81, 83-84 (Pa. Cmwlth. 1993) (where no factual issues are in dispute, the motion proceedings, including briefs and arguments by the parties, provide ample opportunity for the parties to be heard; summary judgment may be entered by the agency head). In ruling upon a motion for summary judgment, an administrative agency follows the well-known standards of the Rules of Civil Procedure 1035.1-1035.5 (motion for summary judgment). *See, United Transp. Union v. Pennsylvania P.U.C.*, 68 A.3d 1026, 1033

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<sup>1</sup> Section 1207. Board of Property.

The Board of Property shall, subject to any inconsistent provisions in this act contained, continue to exercise the powers and perform the duties by law vested in and imposed upon the said board.

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The Board of Property shall also have jurisdiction to hear and determine cases involving the title to land or interest therein brought by persons who claim an interest in the title to lands occupied or claimed by the Commonwealth.

\* \* \*

71 P.S. § 337.

(Pa. Cmwlth. 2013) (summary judgment may be granted if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law; the record must be viewed in the light most favorable to the nonmoving party, giving that party the benefit of reasonable inferences, and all doubts as to existence of genuine issue of material fact must be resolved against the moving party; however, to preclude summary judgment, the non-moving party must establish that a genuine issue of material fact exists).

The parties appear to agree that, because the east-west distances recited on Plaintiff's deed (and its predecessors) do not extend to the adjoining's properties, there are open areas subject to dispute at the western side of Plaintiff's property. Plaintiff's combined two-parcel property is generally rectangular, though the parallel east and west borders are not of the same length and the southern border is irregular. Plaintiff's deed recites that the northern boundary of its first (northern) parcel is to run from a post in its northwest corner 183 perches to post, formerly a maple, on the west line of its eastern adjoiner. Plaintiff's deed also recites that the common boundary between its first and second parcels is to run from a post, formerly a dead chestnut, on the west line of its eastern adjoiner 183 perches to a post, formerly a dead chestnut, on the east line of its western adjoiner. Plaintiff's deed further recites that the southern boundary of its second (southern) parcel is to run to a post in the east line of its western adjoiner. However, Plaintiff's surveyor determined that the western and eastern adjoining are 3968.75 feet apart at the northern boundary of the first (northern) parcel and 3956.21 feet apart at the middle between the two parcels. This distance is 240 perches<sup>2</sup> and is significantly – almost a third – greater than the recited distances in the deeds and creates a significant ambiguity in the deeds. Plaintiff's theory is that the original grantors intended that the east-west distances be sufficient to

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<sup>2</sup> See, Plaintiff's Response to Motion for Summary Judgment exhibit 2 at 46.

reach these monuments. *See, Baker v. Roslyn Swim Club*, 213 A.2d 145, 149 (Pa. Super. 1965) (decisive factor in determining boundaries of conveyed property is intent of parties; rules of construction give preference to natural objects, then to artificial monuments, then to adjacent boundaries, and finally to courses and distances). Plaintiff argues that the locations of these monuments are disputed genuine issues of material fact precluding entry of summary judgment in favor of the Commonwealth.

Plaintiff disputes the location of the beech tree (recited as only a post in the deeds, but as a beech tree in the warrant) marking the southwest corner of the second (southern) J.W. Smith parcel and the accuracy of the 1906 Report and the Secretary's reliance on the 1906 Report to establish the location of that beech tree. The 1906 Report identifies a beech tree along the southern boundary at a point matching the distances described in the deed and a maple tree along the southern boundary at the western adjoiner. The 1906 Report also identifies dead chestnut trees along the line between the two parcels at the eastern adjoiner and at the point of the distance recited in the deed. The 1906 Report further identifies a maple with post not found along the northern boundary of the G. Dock & E.G. Rehrer (northern) parcel at the eastern adjoiner, a post along this boundary at the distance recited in the deed and a post along this boundary at the western adjoiner.

Plaintiff's surveyor concurs with the locations of the post and the maple tree along the northern boundary and the dead chestnut trees at the ends of the line between the parcels. Plaintiff's surveyor also identified a beech tree along the southern boundary asserted to be at the southwest corner of the J.W. Smith parcel. Plaintiff's expert forester opined that this beech tree was over 200 years old and would have been there at the time of the original deed in 1836. However, Plaintiff's surveyor has not clearly identified where along the southern boundary this

ancient beech tree is located. Stating that the tree is at the southwest corner of the J.W. Smith parcel is at best ambiguous. If at the distance recited in the deed, it proves the Commonwealth's case that the monument matches the distance recited in the deed. If at the adjoiner, it assumes that Plaintiff owns the Disputed Parcel, a circular description. Moreover, Plaintiff's experts have not opined that at the time of the original deeds or warrants there was no beech tree at the distance recited in the deed.

By failing to identify contrary evidence of the location of the natural monument along the southern boundary creating the western end, Plaintiff has failed to identify any genuine issue of material fact about the location of such a tree. The Board can only conclude that at the time of the original deed a beech tree – now gone – existed along the southern boundary at the distance recited in the deed. And even if Plaintiff's surveyor opined that this beech tree was at the western adjoiner, the Board would still be required to find that the property corner was set at the distance recited in the original deed and cited in the 1906 Report. *See, Post v. Wilkes-Barre Connecting R.R. Co.*, 276 133 A. 377, 378 (Pa. 1926) (monument that meets the courses and distance and amount of land must be accepted as the true monument, while another that does not cannot be accepted). Because that natural monument set the property corner, Plaintiff's predecessor did not obtain the disputed area.

Contrary to Plaintiff's argument, natural and artificial monuments take precedence over record monuments, such as reference to the boundary of an adjoiner's property. *See, Hermansen, Knud Everett, PLS, PE, PhD, Esquire, Boundary Retracement Principles and Procedures for Pennsylvania*, at Ch. 9 (1998) (because of the relative chance of mistaking a position, when there is a conflict between natural, artificial and record monuments, priority is (1) natural monuments, (2) artificial monuments such as posts, and (3) record monuments such as adjacent boundaries).

Furthermore,

Where the calls for the location of boundaries to land are inconsistent, **other things being equal**, resort is to be had first to natural objects or landmarks, next to artificial monuments, then to adjacent boundaries (which are considered a sort of monument), and thereafter to courses and distances.

*Baker* at 198 (emphasis in original). The original grantor may have mistakenly believed that the western adjoiners were closer. But by reciting the property by natural or artificial monuments and the distances that accurately located them, any reference to the record monument of the adjoiner property boundary must yield.

Plaintiff apparently does not dispute any of the physical artificial monuments – posts and trees – used to identify the northern parcel. Accordingly, the Commonwealth must prevail as to that parcel. Plaintiff apparently does not dispute any artificial monuments used to identify the southern parcel except for the beech tree at the southwest corner. There is no question that the eastern and western boundaries of the two parcels are to each form a single straight line. And Plaintiff's theory is identical for the two parcels. It is therefore highly doubtful that the Board could find after hearing that the identified beech tree marked the physical monument recited in the deeds and warrant and therefore set the western boundary of the J.W. Smith parcel farther west than the western boundary of the G. Dock and E.G. Rehrer parcel.

Accordingly, as a matter of law the distances from Plaintiff's deeds cannot be extended from the physical monuments to the boundary Plaintiff seeks to rely upon to establish ownership of the disputed tracts. There are no genuine issues of material fact, and the Commonwealth is entitled to judgment as a matter of law.

Wherefore, the Board enters the following order.



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
BEFORE THE STATE BOARD OF PROPERTY**

**Deer Ridge Lodge,  
Plaintiff**

v.

**Commonwealth of Pennsylvania,  
Department of Conservation and  
Natural Resources,  
Defendant**

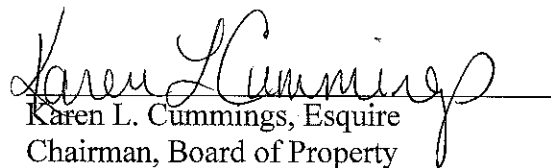
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**Docket No. BP-2011-0001**

**FINAL ORDER**

AND NOW, this 23<sup>rd</sup> day of January, 2015, having duly convened and considered the entire record of the proceedings, and based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the State Board of Property hereby **GRANTS** the Commonwealth's motion for summary judgment, enters judgment in favor of the Commonwealth and **DISMISSES** this matter.

**BY ORDER:**

  
Karen L. Cummings, Esquire  
Chairman, Board of Property

*Counsel for Plaintiff:*

David E. Holland, Esquire  
MACDONALD, ILLIG, JONES & BRITTON, LLP  
100 State Street, Suite 700  
Erie, PA 16507-1459

*Counsel for Defendant:*

Martha R. Smith, Esquire  
Dept. of Conservation and Natural Resources  
Rachel Carson Office Bldg., 7<sup>th</sup> Floor  
P.O. Box 8767  
Harrisburg, PA 17105-8767

Board counsel:

Thomas A. Blackburn, Esquire

Date of mailing:

January 23, 2015