

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF MINES MINERALS AND ENERGY**

**PUBLIC FORMAL HEARING  
RECOMMENDED DECISION OF HEARING OFFICER**

**IN RE: VICKIE LESTER, Complainant  
Complaint No. ECN 1200085**

Public Formal Hearing was held on January 7, 2015 at 1:30 P.M. at the Division of Mined Land Reclamation's Big Stone Gap Office, Buchanan-Smith Building, Room 219, Big Stone Gap, VA.

The Division of Mined Land Reclamation received a complaint on May 8, 2012 from Vickie Lester that she believed mine drainage was the source of a number of problems at her home. Investigation was conducted on Ms. Lester's complaint. The Complaint Investigation Report of 12/13/12, found, consistent with Technical Review No. 2742, the "water behind the house is most likely surface and shallow ground water flow and is not related to the deep mines". Ms. Lester's complaint was closed as of 12/13/12 as resolved and it was found:

Under the authority of *Title IV of the Virginia Coal Surface Mining Control and Reclamation Act of 1979*, as amended, the investigating authorized representative(s) of the Director of the Department of Mines, Minerals and Energy has found that this problem is not eligible for the Abandoned Mine Land Program.

Upon request of Complainant, an *Informal Complaint Review* was conducted. Subsequent to the *Informal Complaint Review* Complainant filed Application for Review and was afforded opportunity to present information related to her complaint at Public Formal Hearing.

The following individuals participated in the Public Formal Hearing held January 7, 2015:

Mr. Paul Kugelman, Jr., Esq.	Counsel for DMME
Mr. Harve A. Mooney	Agency Party Representative at hearing
Ms. Vickie Lester	Complainant (who represented herself and was a witness)
Mr. Gregory Lester	Witness for Complainant
Mr. Mike Washburn	Witness for DMME

**BURDEN OF PROOF:**

Complainant has the burden of proof in this cause. § 2.2-4020 (C.) of the Code of Virginia, 1950, as amended, provides the burden of proof shall be upon the proponent or applicant.

## EXHIBITS AND TRANSCRIPT:

Exhibits were admitted *en masse* by agreement of the parties. Complainant admitted one folder of exhibits containing one un-tabbed section and five color tabbed sections. For clarity in referencing Complainant's Exhibits, the untabbed section are referenced as Tab 1 and the 5 color tabbed sections are referenced, in the order included in her exhibit folder, as Tab 2 through Tab 6. Agency admitted four exhibits labeled "A" through "D".

Complainant's Exhibits are referred to herein as "C. Tab \_\_\_" with the above designated Tab number inserted at the "\_\_\_". Agency's Exhibits are referred to herein as "A. Ex. \_\_\_" with the Exhibit letter inserted at the "\_\_\_". The transcript of the hearing consist of one bound volume and is herein referred to as "Tr. \_\_\_" with the page number inserted at the "\_\_\_".

## FINDING OF FACTS:

01. On May 8, 2012 DMLR received a complaint from Ms. Vickie Lester addressing her concerns about drainage from abandoned mines near her home. Ms. Lester indicated drainage from the mines was the source of a number of problems with her home, including unraveling of the slope above her driveway, dampness (mold) under her home, and severe gullies on her driveway.<sup>1</sup>

02. Ms. Lester's complaint was assigned complaint number "ECN 1200085" and was investigated by Mr. Ken Hogston who met with her May 9, 2012.<sup>2</sup> Ms. Lester told Mr. Hogston there were two old mines behind her house where she believes the water is coming from.<sup>3</sup>

03. Mr. Hogston addressed matters in two Complaint Investigation Reports. The first was issued on 5/15/12 and noted the complaint was being submitted to DMLR's Technical Section to determine if eligible AML mining has cause or contributed to the problem addressed in the complaint. He also noted further review pending the completion of the Technical Report. A subsequent Complaint Investigation Report was issued on 12/13/12, after the Technical Report, TRN 2742, was completed.<sup>4</sup>

04. The Abandoned Mine Land Complaint Investigation Report of Mr. Hogston dated 5/15/12 indicated:

Inspecting the Complaint's property the cut bank was wet and material had slide down the slope to the back of the house and along driveway. Water approx. 5 gals/min was flowing from behind the house and was ditched adjacent to the driveway off of the property. Photos were taken of the property. I told the Complaint that I would check the area mine maps to see if I could locate nearby mining during my investigation.

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<sup>1</sup> A. Ex. A and A. Ex. C.

<sup>2</sup> A. Ex. C.

<sup>3</sup> C. Ex. Tab 2, A. Ex. A.

<sup>4</sup> C. Ex. Tab 2; A. Ex. A. & C.

On 05-11-12 I met with Henry Cox and Roger Chaffin of United\Wellmore Coal to discuss this Complaint and review mine maps in the Lynn Camp area. United\Wellmore controls most of the mineral in the Lynn Camp area and was able to find mine maps of the Glamorgan & Splashdam coal seam that was mined in the general area of the Complainant. The Glamorgan works are too high on the hill to be considered in this complaint.

The Splashdam mine works image is attached below. The Complainant's home is marked near the center of the image with a dark spot and the Splashdam mine works are to the NE & NW. The mine work to the NE is a Patrick Coal Corp site PN 1200415, which was mined from 1986 to 1987 and released in 1997. This PN1200415 mine is approximately 350'ft horizontal and 60'ft vertical from the Complainant's house. The NW mine was operated by "Smith & Ramey" and was completed in 1956. This NW mine is approx. 400'ft horizontal and 60'ft vertical from the Complainant's house. The Splashdam coal seam is sloping away from the home (outcrop) with the portal of the Patrick Coal mine at elevation 1337' ft and the elevation at the deepest point in the mine at 1322' ft. There was no evidence of any mine discharge flowing from either mine, but there is a surface channel behind the Complainant's house that could direct water towards the home. Considering the close proximity of the Splashdam mine works to the Complainant, possibility of the mines being filled with water, and the surface channel shown on the Yellow Topo map this complaint is being submitted to DMLR for Technical Assistance.<sup>5</sup>

05. Mike Washburn was assigned to and provided the technical assistance as requested by Mr. Hogston. Mr. Washburn wrote Technical Report Number 2742, dated December 3, 2012, (Lester Drainage Complaint Investigation) which addressed Complaint No. 1200085. This Report's "Summation of Findings" stated:

The small extent of the two mine works and the coal seams dip to the northwest indicate the water behind the house is most likely surface and shallow groundwater flow and is not related to the old deep mines.<sup>6</sup>

06. The Abandoned Mine Land Complaint Investigation Report of Mr. Hogston dated 12/13/12 addressed TRN 2742 and its conclusions. Mr. Hogston further stated that, as of this report, the complaint is being closed as resolved. The Investigation Report dated 12/13/12 indicated, in pertinent part:

An on-site field investigation of this complaint was conducted on 06-05-12. This investigation was performed by DMLR Engineer Mike Washburn and myself. Mr. Washburn gathered information and developed Technical Report number 2742. TRN 2742 concluded that the "water behind the house is most likely surface and shallow groundwater flow and is not related to the old deep mines".

. . . . As of this report this complaint is being closed as resolved.<sup>7</sup>

07. On January 9, 2013 request was received from Ms. Lester for an informal review of agency's decision on Complaint No. 1200085.<sup>8</sup> Due to scheduling conflicts, Ms. Lester was

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<sup>5</sup> C. Ex. Tab 2; A. Ex. A.

<sup>6</sup> C. Tab 1; A. Ex. D.

<sup>7</sup> C. Ex. Tab 3; A. Ex. B.

<sup>8</sup> C. Ex. Tab 6.

unable to meet with the conference officer until February 27, 2013.<sup>9</sup> An *Informal Complaint Review* report was issued March 28, 2013. The *Informal Complaint Review* concluded:

There is no evidence contrary to the technical report in the findings of this complaint review. Based upon the known facts of this investigation, the Division's finding concerning the impact of mining on the property was proper."<sup>10</sup>

08. A Formal Review was requested by Complainant, Ms. Vickie Lester.<sup>11</sup>

#### CONCLUSIONS OF LAW:

On May 8, 2012 DMLR received a complaint from Ms. Vickie Lester, designated "ECN 1200085", stating drainage from abandoned mines near her home was the source of a number of problems with her home, including unraveling of the slope above her driveway, dampness, mold, and severe gullies on her driveway.<sup>12</sup> DMLR's Complaint Investigation determined the water behind her house she complained of was not related to the old deep mines, the problem is not eligible for the Abandoned Mine Land Program, and the complaint was closed as resolved.

An Administrative Review was requested by Complainant and Public Formal Hearing was held. At such hearing Complainant presented testimony and documentary evidence as to matters related to her complaint, including water flow and water damage. She presented a CD media presentation of scenes related to the water and water damage/problem at her house site. Complainant's Exhibits include six cd's depicting the water, erosion, water flow, and other related matters.

The existence of water related problems is not contested. Complainant described and presented a number of photographs depicting water, water flow, water damage, areas around her house, erosion, and mud and rock slides. However, whether the water is related to mining or mining activity is contested.

Mr. Lester testified to his believed that when it rains the mines are holding water and the more it rains the more pressure it gets, the more it releases off, and that is what is coming off his driveway, not regular ground water.<sup>13</sup> Mr. Lester further testified that not everyone on the hillside on the left side of the road was having ground water problems. The only water problems he observed occurred when there had been mines located behind homes or close to homes.<sup>14</sup>

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<sup>9</sup> A. Ex. C.

<sup>10</sup> A. Ex. C; C. Tab. 5.

<sup>11</sup> C. Tab 6.

<sup>12</sup> A. Ex. C.

<sup>13</sup> Tr. pg. 40.

<sup>14</sup> Tr. pg. 25.

Ms. Lester testified as to her belief that the water is mine related. However, she also testified she had not walked the water that was running and traced it back. She related her concerns with copperheads, which she believed was also mine related, as affecting her walking the water flow back. Ms. Lester testified in response to Mr. Kugelman's questions:

Q So is it fair to say while you suspect the water is coming from the mine you don't know the water is coming from the mines?

A Well I've not, I've not walked it myself and there is a reason for that ....<sup>15</sup>

Q The question is, did you walk it?

A I didn't walk it, no, I didn't.<sup>16</sup>

Ms. Lester also testified as to two mudslides, water problems, FEMA paying for some clean up, moving of rocks and mud around her home, and other problems.<sup>17</sup>

**Investigation:**

Ms. Lester's complaint was investigated by Ken Hogston who met with her May 9, 2012. Ms. Lester told Mr. Hogston her family had lived at their house location since 1991 and the cut bank out slope behind her house has always been wet, it also stays wet under their double wide home, and the ditched surface water gullies the driveway. She said that wet cut bank continually allows rocks and mud to slide down causing a perpetual maintenance problem. Ms. Lester also told investigator she knew there are two old mines behind her house and she believed this is where the water is coming from.<sup>18</sup>

Mr. Hogston discussed matters with Complainant, viewed her property, took photographs of her property, and documented Complainant's concerns. He reviewed mining maps of the area including the Glamorgan & Splashdam coal seam mined in the general area of Complainant. He determined the Glamorgan words are too high on the hill to be considered in this complaint. His Report discussed Splashdam mine works to the NE and NW of Complainant's home. He identified two mining operations in the general area of Ms. Lester's home (Patrick Coal Corp. site PN 1200415 mined from 1986-1987 and released in 1997, and a mine operated by "Smith & Ramey" which was completed in 1956). He determined elevations and distances concerning the mines and slope of the Splashdam coal seam was determined sloping away from Complainant's.

Upon consideration of these and other matters Mr. Hogston determined there was no evidence of any discharge flowing from either mine. However, considering the close proximity of the Splashdam mine works to Ms. Lester's home, the possibility of the mines being filled with water, and the surface channel shown on the Yellow Topo map, he submitted Ms. Lester's Complaint to DMLR for Technical Assistance.<sup>19</sup>

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<sup>15</sup> Tr. pg. 58 (lines 18-23).

<sup>16</sup> Tr. pg. 61 (lines 9-10).

<sup>17</sup> Tr. pg. 34-35.

<sup>18</sup> C. Ex. Tab 2; A. Ex. A.

<sup>19</sup> C. Ex. Tab 2, A. Ex. A.

**TRN 2742:**

Mike Washburn, a Virginia Professional Engineer who has been an engineer with the DMME for approximately 37 years and an environmental engineer with DMME since about 1992 was assigned to provide the Technical Assistance as requested by Mr. Hogston. He set forth his findings in TRN 2742.<sup>20</sup>

An on-site field investigation of Ms. Lester's complaint was conducted on 06-05-12 by Mr. Washburn and Mr. Hogston who went to Ms. Lester's home and discussed matters with her. Ms. Lester pointed out where the water was coming from.

In his investigation Mr. Washburn reviewed matters with Complainant, referenced information, including mine maps, geologic information, and topographic information. He went up on the hillside behind Complainant's house and looked at the deep mine.<sup>21</sup>

During his site visit Ms. Lester informed him of her concerns, told him some of the history of the site, and pointed out where the water was coming from.<sup>22</sup> Mr. Washburn reviewed USGS topographic maps, mine maps, and was able to superimpose those. In viewing the deep mine he found several open portals/mine openings and determined a nearby homeowner was getting water out of one of them. The homeowner pushed up a berm in front of a portal and he noted there was some water back in there with a collection pipe.<sup>23</sup>

Mr. Washburn further took into consideration, among other matters, information on the extent of mining, the direction and dip of the coal seam, the direction, distance, and elevations between the mining activity and Complainant's home. He addressed map elevation of Complainant's home and surrounding land formations and addressed the presence of a surface channel behind complainant's house that could direct water towards the home. He addressed matters related to the area geology, identification of coal seams, and mining in the area. He confirmed there are two deep mines in the area.<sup>24</sup>

Mr. Washburn concluded "water behind the house is most likely surface and shallow groundwater flow and is not related to the old deep mines".<sup>25</sup> In writing TRN 2742, he was tasked with only determining if the water Ms. Lester was concerned about was coming from something that was mine related and not.<sup>26</sup>

Upon reviewing and incorporating Mr. Washburn's report findings, the Complaint Investigation Report dated 12/13/12 noted TRN 2742 found the "water behind the house is

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<sup>20</sup> Tr. pg. 73-74, 90.

<sup>21</sup> Tr. pg. 73-78.

<sup>22</sup> Tr. 75-76.

<sup>23</sup> Tr. 77.

<sup>24</sup> Tr. 89-91 and A. Ex. C.

<sup>25</sup> C. Ex. Tab 1; A. Ex. D.

<sup>26</sup> Tr. 79.

most likely surface and shallow groundwater flow and is not related to the old deep mines", concluded Complainant's water problem is not eligible for the Abandoned Mine Land Program, and the complaint was being closed as resolved.<sup>27</sup>

***Informal Complaint Review:***

On January 9, 2013 request was received from Ms. Lester for an Informal Review of agency's decision. On February 27, 2013, Conference Officer and Area Inspector met with Ms. Lester and her husband at their home to receive additional information from Ms. Lester concerning her complaint. Ms. Lester noted she believed there was another operation not mentioned in the Technical Report and indicated an additional underground mine above her dwelling. She stated there was an operation by an Ersel Johnson. She thought the mining took place in the late 70's or early 80's. Mr. Lester stated thought the seam may have been the Splashdam coal seam.

The *Informal Complaint Review* indicated a review of DMME's records showed Mr. Ersel Johnson was a miner but no records of his association with any mine were discovered and the review of mining in the area only revealed the operations noted in Technical Investigation Number 2742.

The *Informal Complaint Review* was issued on March 28, 2013. The conference officer reviewed, among other matters, all the information provided by the complaint and the technical investigations associated with Ms. Lester's concerns. A review of mine mapping records at DMME was conducted to ascertain underground operations in the vicinity of the Lester residence.<sup>28</sup> The *Informal Complaint Review* found no evidence contrary to the Technical Report findings and found the Division's finding concerning the impact of mining on the property to be proper.<sup>29</sup>

**RECOMMENDATION:**

Upon consideration of the evidence presented in this case and for the reasons stated above, the Hearing Officer finds that:

1. Water causing erosion and other damage is apparent on Ms. Lester's property  
However, it cannot be determined that the water is related to mining activities, mine drainage, or the impact of mining.
2. There is no evidence presented at hearing sufficient to contradict the findings in TRN 2742 or the findings set forth in the Complaint Investigation.
3. The findings set forth in TRN 2742 are proper.

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<sup>27</sup> C. Ex. Tab 3; A. Ex. B.

<sup>28</sup> A. Ex. C.; C. Tab. 5.

<sup>29</sup> A. Ex. C.

4. The Complaint Investigation findings are proper and the complaint being closed as resolved is proper.

For the reasons stated above, the undersigned Hearing Officer respectfully recommends *affirming* the Complaint Investigation findings.

Respectfully submitted this 4<sup>th</sup> day March, 2015.



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Lorin A. Costanzo, Hearing Officer