

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

**WHEELING CREEK WATERSHED
PROTECTION AND FLOOD
PREVENTION COMMISSION,
a public corporation,**

Plaintiff,

v.

**UPON CONDEMNATION
CIVIL ACTION NO. 90-C-229M**

**THOMAS E. SCHERICH and
BERTHA SCHERICH, his wife,
and ORANGE E. SCHERICH and
MARGARET SCHERICH, his wife,**

Defendants.

FINAL ORDER

On the 3rd day of July, 2019, came the Defendants¹, by counsel, Joseph L. Jenkins, Lewis Glasser PLLC, and David C. Hook, Hook & Hook; and Plaintiff, by counsel, Eric M. Gordon, Berry, Kessler, Crutchfield, Taylor & Gordon, for a hearing on Defendants' motion for further proceedings to determine just compensation. After reviewing Defendants' motion and the records of this matter, the Court hereby **DENIES** Defendants' motion.

The Plaintiff filed this condemnation action on June 1, 1990 to acquire two parcels, including "all of the oil and gas appurtenant thereto," owned by the Defendants in Marshall County, West Virginia as further described in more detail in the Plaintiff's Petition. A hearing was held on June 15, 1990, whereby, over the Defendants' objections, the Court entered an Order on the same date granting the Plaintiff right of entry and vesting it with defeasible title to the property it sought to condemn.

¹Orange and Margaret Scherich are deceased. Their grandson, Eugene Scherich, along with the other defendants, their son and his wife, Thomas and Bertha Scherich, are the current owners of the property sought to be condemned in this matter and filed the motion for further proceedings.

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On June 15, 1990, the Plaintiff, pursuant to W. Va. Code § 54-2-14a, paid into this Court the sum of \$97,000.00 as its estimate of just compensation for the property sought to be condemned. The last activity in this matter was an order entered on May 30, 1991 disbursing the Plaintiff's deposit of \$97,000.00 to the Defendants.

Given the time between the filing of Defendants' motion for further proceedings and the last activity in this matter – a period of over twenty-seven years – the Court **FINDS** that this matter has been concluded; and that any claims of deficiency in the due process afforded the Defendant landowners were waived by Defendants. Furthermore, the doctrines of estoppel and laches, as well as potentially any statutes of limitation or repose, prevent Defendants from resurrecting this matter. Finally, the Court believes the acceptance of the deposited funds, as evidenced by the last order entered in this matter on May 30, 1991 disbursing such funds to Defendants, without further proceedings until now, is sufficient proof of accord and satisfaction such that Defendants have no further right or claim in this matter.

Accordingly, for the above reasons, the Court **DENIES** Defendants' motion and **ADJUDGES** that this matter was concluded as of the last activity on record: May 30, 1991.

Additionally, at the hearing, counsel for Plaintiff, Eric M. Gordon, discovered that a former partner in his firm, Rodney T. Berry, had previously represented Defendants in this matter. Upon discovering the potential conflict, Mr. Gordon, without objection from the Plaintiff, represented at the hearing by its President, Howard Coffield, moved to withdraw his representation of Plaintiff. Finding the motion appropriate under the circumstances and having no objection from the Plaintiff, the Court **GRANTS** Mr. Gordon's motion to withdraw from the representation of Plaintiff.

It is **ORDERED** that the Clerk of this Court forward certified copies of this Order to counsel and the parties as follows: Joseph L. Jenkins, Lewis Glasser PLLC, 300 Summers Street,

From:

10/22/2019 12:05

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Suite 700, Charleston, West Virginia 25301; David C. Hook, Hook & Hook, P. O. Box 792, Waynesburg, Pennsylvania 15370; Eric Gordon, Berry, Kessler, Crutchfield, Taylor & Gordon, 514 7th Street, Moundsville, West Virginia 26041; and Howard Coffield, President, Wheeling Creek Watershed Commission, 1 Ballpark Drive, McMechen, West Virginia 26040.

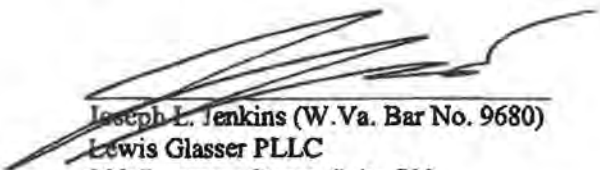
It is **ORDERED** that this is a **FINAL ORDER** and that this matter is stricken from the active docket of the Court.

ENTERED this 22nd day of Oct, 2019.



Honorable David W. Hymms, Jr.

Prepared and submitted by:



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