

Land access fight heats up

By DUSTIN BLEIZEFFER

Star-Tribune energy reporter Wednesday, August 08, 2007

A landowner disputes the state's assertion that it can appoint energy companies to act as "agents of the state" in order to cross his private surface to access state land in the absence of an easement.

Rancher Kenny Clabaugh has not denied the state access to a state parcel within his ranching operation, but he has denied access to coal-bed methane companies that do not have an easement agreement with him.

The State Board of Land Commissioners will meet in executive session at 9 a.m. today to discuss the matter, according to state lands director Lynne Boomgaarden. The board's regular meeting is at 8 a.m. Thursday.

It's the latest development in an ongoing dispute between Clabaugh and the state. State regulatory agencies permitted a number of coal-bed methane water discharges upstream from Clabaugh without considering the cumulative impact of the volumes of water in the drainage.

The water has flooded large portions of low-lying grazing pastures on Clabaugh's ranch, severely degrading the ranch's agricultural use. Clabaugh has asked the state to either reduce the flow of coal-bed methane water coming down the drainage, or pipe it across his property.

The state wants to order construction of a ditch through the pasture instead.

In July, the state land board asked Petro-Canada Resources, Emerald Operating Co. and Anadarko Petroleum Corp. to act as "agents of the state." As such, they may cross private land on the Clabaugh Ranch in the Powder River Basin to fix flooding damages from coal-bed methane water, according to Boomgaarden.

The state did not provide a legal description of where it wants the companies to cross the private land.

"Typically, if we needed to access our lands to do improvement or work on it, our lessees have cooperated," Boomgaarden said. "This is a case where the lessee is denying us access."

Boomgaarden's last statement is untrue, according to Clabaugh's attorney.

In a July 26 written response to the state land board, attorney Tom Toner said Clabaugh has always allowed state employees to cross the private property to inspect the state lease. Toner noted that one coal-bed methane operator not listed as an "agent of the state" does have an easement agreement with the ranch, and has been allowed to access the state land.

Toner listed several questions and concerns about the board's assertion that it can appoint third parties as "agents of the state."

Toner wrote, "Is the state now claiming that the entire ranch of every person who holds a state grazing lease is subject to some undefined easement for the benefit of the state that allows the state or its so-called 'agents' to cross anywhere on the ranch?"

Boomgaarden told the Star-Tribune she could not address specifics of the Clabaugh case. But she said she didn't believe that appointing the companies to act as agents of the state would set a precedent.

"If we have a situation where we want to go onto (state land) to preserve and improve the value of state lands, and a lessee denies us the opportunity, then we're going to have an issue to address," Boomgaarden said.

Sen. John Schiffer, R-Kaycee, said he has heard from several constituents in the area about the state's recent action, and said he has several questions for the state land board.

"Agents of the state. I don't know what that means," Schiffer said.

The land board is composed of Gov. Dave Freudenthal and the other four state elected officials.

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