

Land board sets bad precedent with 'agents'

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Star-Tribune Editorial Board

Wyoming's Board of Land Commissioners should reverse its decision to appoint energy companies as "agents of the state" in a land access dispute.

Such a designation suggests that the coal-bed methane companies are acting on behalf of the citizens of Wyoming. There may be some overlap, but the firms involved are working primarily in their own interests.

The board says it has the right to give three companies the authority to cross Powder River Basin rancher Kenny Clabaugh's private land, to access a state parcel he leases for grazing. Clabaugh maintains the companies should have to negotiate an easement agreement with the ranch, as another coal-bed operator has done.

Facts and fairness appear to favor Clabaugh's position. Low-lying grazing pastures on his ranch were flooded when state regulatory agencies permitted a number of CBM water discharges upstream from his operation. The agencies failed to consider the cumulative impact of the volumes of water in the drainage.

Clabaugh asked the state to either reduce the flow of CBM water or pipe it across his property. But the state merely wants to dig a ditch through the pasture.

The state contends the companies are working on its behalf to fix flood damages on the state parcel. But a ditch isn't the only option the state has available. The state could fix the problem by ordering the CBM operators to dump less water on the ranch.

That, however, would reduce CBM production, at the expense of company profit as well as state severance revenue. The state doesn't want to do that. So the state's position boils down to this:

Our error allowed the ranch to be flooded. The flooding diminished the land's agricultural value. But we're going to ignore the owner's request about how to fix the damage, so that we can do it without hurting private companies' production. We'll declare the CBM companies our agents, which will allow them to cross private land anywhere they choose, without obtaining an easement agreement with the rancher.

The state certainly needs access to its own lands. If the state land board decides to build a road on a state parcel, or make some other improvements, it should be able to hire a contractor and use a defined route on private land to gain access.

But the state should not be able to appoint as its agent a third party that also has an interest in the access dispute, thereby circumventing the easement process. It's unfair, and it sets a bad precedent for infringement on property rights.

Clabaugh's attorney, Tom Toner of Sheridan, asked the board this fundamental question: "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?"

That's precisely what the board seems to be claiming. It needs to admit that it overstepped its authority.