

**COMMISSIONERS COURT OF DEWITT COUNTY, TEXAS**

**MARCH 28, 2016 PUBLIC HEARING REGARDING:  
OLIVER ROAD PETITION**

**DOCUMENT INDEX**

**Supplemental Public Hearing Record/Page:**

**Proponent Exhibits:**

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Proponent Exhibit 13 .....	SPHR/2
Public Participation Form -- Submitted by Carolyn E. Petru on April 27, 2016	
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Letter (with Exhibits) -- Submitted by Carolyn E. Petru, Ralph Manning, and Alice Manning on April 27, 2016	
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Letter -- Submitted by Marcus F. Schwartz on April 28, 2016	

# DE WITT COUNTY COMMISSIONERS COURT

This Form must be completed and presented to the county clerk prior to the time the agenda item you wish to address is discussed before the Commissioner's Court.

## PUBLIC PARTICIPATION FORM

Instructions: Please print or write legibly and fill in all appropriate blanks.

NAME: Ralph W. Manning / Alice M. Manning (wife)

HOME ADDRESS: 202 Oak Ridge Drive Yorkum, Tex. 77995  
(Street, City, State, Zip Code)

TELEPHONE: 361-293-6616 Check One: ☒ Home ☐ Work ☐ Cell Ph.

EMPLOYER: Retired

\*\*\*\*\*

Do you represent any particular group or organization? ☐ YES ☒ NO

If yes, please state the name, address, phone number, and your capacity within the group or organization:

Name: \_\_\_\_\_ Capacity: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

\*\*\*\*\*

Which agenda item (number) do you wish to address? Closing Oliver Rd.

In general, what is your position on the subject? ☒ FOR ☐ AGAINST ☐ ON THE SUBJECT  
(Being "on the subject" is neither pro nor con, and is typically the recommended position for a county employee.)

Will you be offering public testimony on the subject? ☐ YES ☒ NO

Will you be contributing any documents or exhibits for the permanent record? ☒ YES ☐ NO

If yes, please identify the exhibit(s):

Exhibits A & B

Additional comments:

Ralph - unable to sign due to Parkinson

I affirm that the information given is TRUE. Alice M. Manning Date: 4/18/2016  
Signature of Witness

SPHR/1

*Rec'd  
4/27/2016  
D*

# DE WITT COUNTY COMMISSIONERS COURT

This Form must be completed and presented to the county clerk prior to the time the agenda item you wish to address is discussed before the Commissioner's Court.

## PUBLIC PARTICIPATION FORM

Instructions: Please print or write legibly and fill in all appropriate blanks.

NAME: Carolyn E. Petru

HOME ADDRESS: 2565 FM 531 Shiner, TX 77984  
(Street, City, State, Zip Code)

TELEPHONE: 361-772-0002 Check One: ☐ Home ☐ Work ☒ Cell Ph.

EMPLOYER: Retired

\*\*\*\*\*

Do you represent any particular group or organization? ☐ YES ☒ NO

If yes, please state the name, address, phone number, and your capacity within the group or organization:

Name: \_\_\_\_\_ Capacity: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

\*\*\*\*\*

Which agenda item (number) do you wish to address? Closing of Oliver Rd.

In general, what is your position on the subject? ☒ FOR ☐ AGAINST ☐ ON THE SUBJECT  
(Being "on the subject" is neither pro nor con, and is typically the recommended position for a county employee.)

Will you be offering public testimony on the subject? ☐ YES ☒ NO

Will you be contributing any documents or exhibits for the permanent record? ☒ YES ☐ NO

If yes, please identify the exhibit(s):

Exhibit A & B

Additional comments:

\_\_\_\_\_

I affirm that the information given is TRUE. Carolyn Elaine Manning Petru Date: 4/18/2016  
Signature of Witness

Cheapside LLC (manager)

2016 DeWitt County Commissioners Court Public Participation Form

EXHIBIT  
#13

SPHR/2

*Penil*  
*4/27/16*  
*20*

April 18, 2016

DeWitt County Judge and Commissioner's Court

Re: Petition To Discontinue/Vacate/Abandon a Portion of Oliver Road, DeWitt County

From: Carolyn Petru, Ralph and Alice Manning:

Dear Judge Fowler and Commissioner's Court:

Carolyn, Ralph and Alice are in favor of closing the portion of Oliver Road. Ralph and his sister are the owners of Cheapside LLC. This land (Cheapside LLC) is on Exhibit A in orange outline. The road in question is located South/West of our property. The 250 acres directly north of us is the land purchased by BHP which is outlined in black. This exhibit was printed before the Black Hawk Plant was built.

Exhibit B shows our property outlined in yellow, as you can see they (BHP) placed the plant right on the property line as shown on this same exhibit. They had no consideration to us or any neighbors. They had purchased 250 acres and could have placed it anywhere on their property. BHP had proven over and over to taken advantage of the surrounding neighbors. Taking advantage of our entrance to our property while the plant was being built and breaking a signed agreement with a pipeline placement were they were to bore under our lane to our property and they decided to cut the lane without our permission. We just happened to be there that day after they had cut our lane to place the pipeline. We never received nothing not even an apology or even a phone call.

BHP has not been as good neighbor and does not consider their neighbors at all. We know we are only 50 acres and what is ours is precious to us also.

Sincerely submitted,

Carolyn Petru

Ralph Manning

Alice Manning

Cc: Mark and Betty Zgabay

SPHR/3

EXHIBIT  
#14

*Carol  
4/29/2016  
kw*

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.

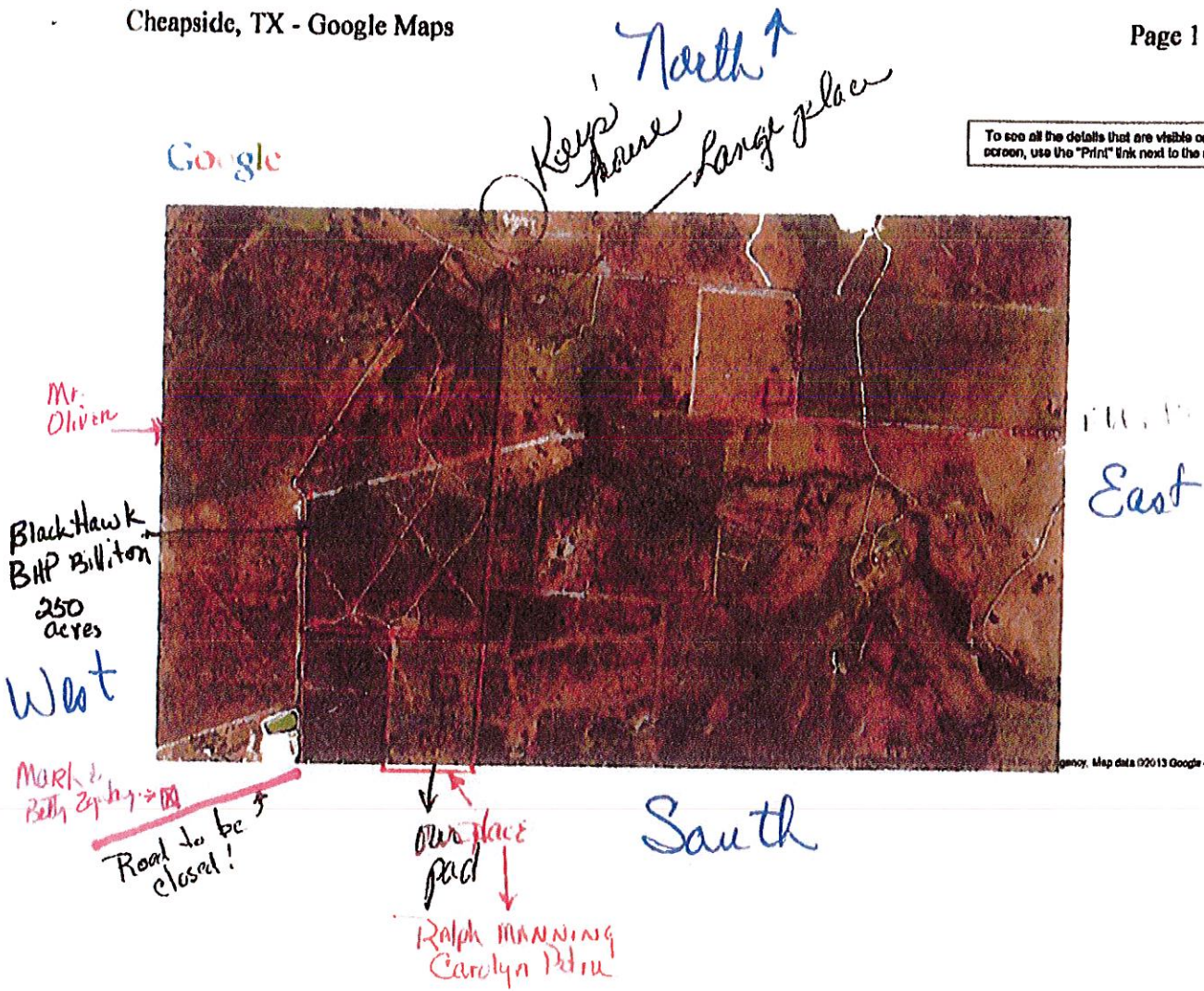


Exhibit A

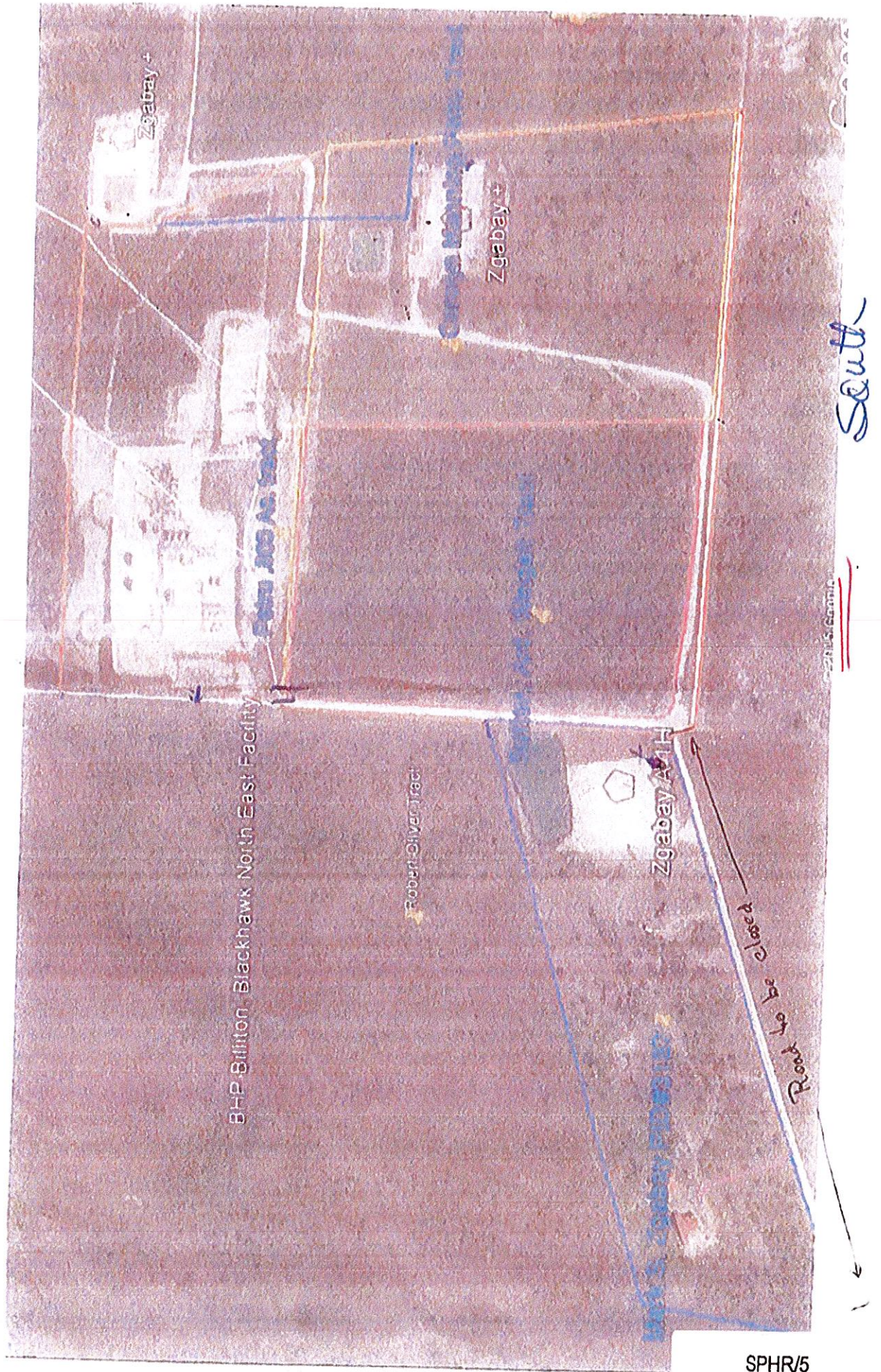
SPHR/4

Rec'd  
4/27/2013  
TW



# Exhibit B

North ↑





LAW OFFICES  
**SCHWARTZ & SCHWARTZ**  
P.O. BOX 385  
HALLETTSVILLE, TEXAS 77964-0385

ARMOND G. SCHWARTZ (1914-2004)  
MARCUS F. SCHWARTZ  
BOARD CERTIFIED PERSONAL INJURY TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

TELEPHONE: (361) 798-3668  
FAX No.: (361) 798-3660

April 28, 2016

Commissioners Court of DeWitt County  
c/o Honorable Daryl L. Fowler  
301 N. Gonzales Street  
Cuero, Texas 77954

Re: Petitioner's Response to Opposition to Petition to Discontinue, Vacate and/or  
Abandon a Portion of Oliver Road

To The Commissioners of DeWitt County, Texas:

Robert Oliver, Mark Zgabay and Betty Zgabay joined by a sufficient number of property owners in Precinct 1 of DeWitt County, where this disputed East-West portion of Oliver Road is located, as required by statute, file this statement in support of their Petition to Discontinue, Vacate and/or Abandon a Portion of Oliver Road.

It is indeed interesting to note the physical objections of Billiton and Devon to closing of the East-West portion of Oliver Road. They note: sharp turns; narrowing of the road; low-hanging tree branches; proximity to power lines and poles; and cattle guards. Each one of these problems were also issues on the East-West portion of Oliver Road in dispute. The photograph (Proponent Exhibit 1) shows a very narrow path (which appears similar to two cow trails); while there were trees overhanging in areas; power lines and poles by the Zgabay home; and gates and cattle guards across the East-West portion of Oliver Road. DeWitt County (sometimes called "County") came in and knocked down trees on both the Zgabay and Oliver property; they cut and built up a much wider road; they removed the gates and cattle guards with no notice to the landowner even though required by Section 251.096 of the Texas Transportation Code; they built the road to the side of the power lines poles; and cut down trees and took land from the Zgabays to make a wide turn where Oliver Road did an approximate ninety degree turn to the north. Furthermore, the County added culverts to the creek crossing shown in Proponent Exhibit #1 and built up the road in this area where water ran during substantial rains.

The argument posed by Billiton that their pipeline company was entitled to notice of the petition filed by the Petition as they are a public utility is bogus. In *Texas Rice Land Partners, Ltd. vs. Denbury Green Pipeline - Texas LLC*, 363 S.W.3d 192 (Texas 2012) the Texas Supreme Court held that a company taking its own product, through its own line from one of their properties to another is not a public utility.

SPHR/6

EXHIBIT  
#15

It should be noted that a member of the Elder family stated their family deeded the Northern portion of Oliver Road (not in dispute) to the County many years ago, if not more than 100 years ago. The Oliver family and no predecessor to the Oliver family deeded any part of Oliver Road to DeWitt County. Therefore when the general public is told in tax statement that Oliver Road is public, that is a correct statement as to the Northern portion not in dispute. This statement enclosed in a tax notice did not put the Oliver family on notice that their undeeded portion of Oliver Road was being claimed by DeWitt County.

Furthermore, as stated in the public hearing on this petition, the U.S. and Texas Constitutions prohibit the taking of private property without fair and adequate consideration. Any statutory law that attempts to do so is clearly unconstitutional; in fact, *Bastrop County vs. Samples, et al*; 286 S.W.3d 102 (Tex.Civ.App. – Austin, 2009) so holds. As the Austin Court of Appeals stated, a county is constitutionally barred from taking private land for a public road without paying the landowner for the privilege. Land for the disputed road that was attempted to be taken from both Oliver and Zgabay was done so under an unconstitutional statute in an unconstitutional taking.

In addition, the undisputed portion of Oliver Road per Mr. Elder, was land deeded to the County for public road purposes. As such, the road must not be less than 40 foot wide and a causeway must be 16 feet wide. Texas Transportation Code §251.007. "A causeway" by definition is a raised road or path across low or wet ground. Merriam-Webster. Therefore, if DeWitt County would maintain the undisputed Northern part of Oliver Road as statutorily required, there could be no objection on the basis claimed by Billiton and Devon as to why they oppose the petition. Further Texas Transportation Code §251.008 requires counties to maintain public roads clear of all obstructions.

If Oliver Road is a public road and is classified as a third-class road, then Mr. Oliver and Mr. Zgabay have a right to continue to have a gate and cattle guard across the road. Certainly any claim as to the disputed East-West portion of Oliver Road was without consideration paid by DeWitt County to Mr. Oliver and Mr. and Mrs. Zgabay and therefore they are entitled to erect a gate and cattle guard across the road just as it was previously. Please see Texas Transportation Code §251.010.

Both the Olivers and their predecessors, the Hamiltons (including their tenants), and the Zgabays and their predecessors both grazed and drove cattle across the road. By the action of the County in taking away their gates and cattle guards they can no longer graze and drive cattle across the road like their neighbors. In the case of the Hamilton / Oliver ownership, grazing and driving cattle across Oliver Road began approximately 105 years ago and continued until the recent widening of the East-West portion of Oliver Road.

The County at the very least must replace the gates and cattle guards if the East-West disputed portion of Oliver Road is a third class road and replace the cattle guards if the disputed part of Oliver Road is a second or first class road.



As far as Devon and Billiton claim that the closure of the disputed East-West portion of Oliver Road would prohibit them from operating wells on Oliver or Zgabay property that is absolutely false. They have access per their oil and gas leases and to make this argument to you, the Commissioners Court, is disingenuous at best. Yes, we agree that it's far cheaper to both Billiton and Devon to put the financial burden on the County, but we contend that they should follow the terms of their lease with the landowners.

There is only one home on the disputed East-West portion of Oliver Road, that being Mr. and Mrs. Zgabay. Every day when the EMS and emergency personnel respond to emergencies, they access private property just like they can go over the disputed portion of Oliver Road. For example, on November 4, 2014 there was an oil tank explosion with injuries and massive fire resulting in EMS and fire department personnel deployment. When responding to this catastrophe, EMS and fire department personnel (coming from Elder Road) cut various owners' fences and drove across pasture land in separate tracts of property. This response would be no different if the disputed East-West portion of Oliver Road is private. We all know if there is an emergency at any one of the hundreds of oil field locations in DeWitt County, the emergency service groups go right up the private road onto private property of various owners. The situation here would be no different. Furthermore, depending on who is responding to an emergency, from where the responder is coming, and the location of the emergency, the distance may or may not be shorter on the undisputed Northern portion of Oliver Road and Elder Road. Likewise, Elder Road being paved would allow faster and higher speed for emergency response.

The oil companies' argument that Robert Oliver bought the property knowing of their plant is patently false. First of all, the purchased property has been in Mr. Oliver's family for over 100 years. Second, he received the land from his brother, Alex. Third, the oil companies had the right to use his road or the disputed East-West portion of Oliver Road per the Oliver family oil and gas lease period. His brother Alex, from whom he bought the land, is on the same family oil and gas lease as Robert. These oil companies still have the right to use the disputed East-West portion of the road under this oil and gas lease and have access to these locations that existed when the land was received from Alex by Robert. Furthermore, they had the right to access their plant from the undisputed Northern portion of Oliver Road conveyed to the County by the Elders long before the plant was built as well as access on Elder Road. Billiton was offered several other parcels of property on which to construct their "gathering plant," but chose to construct the plant in its current location with known restrictions and/or complications of ingress/egress including cattle guards and gates across the disputed East-West portion of Oliver Road. We agree that the undisputed Northern portion of Oliver Road was a deeded County road at the time the oil company acquired the property for the plant for access thereto as well as access on paved Elder Road.

The arguments of the oil companies as to the flood plain issues is indeed puzzling. Why would they have purchased land and erected a plant on a tract in the middle of a flood plain? Only the good Lord knows how many county roads in DeWitt County cross flood plains. The disputed East-West portion of Oliver Road clearly crosses a creek that floods when there is heavy rain (as is obvious in Exhibit 1); yet the County put in culverts and built up the road. Why should these oil companies be treated any different than many DeWitt County citizens who have roads also in flood plains? Furthermore, if the County meets its obligation under the Texas

Transportation Code and constructs a road or causeway as required by the Texas Transportation Code on the undisputed Northern public portion of Oliver Road, this argument is moot.

The argument by the oil companies that cattle guards will interfere with their use of roads is completely meritless. Under the Texas Transportation Code as previously cited (Section 251.009) all landowners in the area including Robert Oliver and Mark and Betty Zgabay are entitled to cattle guards. DeWitt County has allowed other landowners in the area to have cattle guards across public roads including Elder Road and the undisputed Northern part of Oliver Road as shown by the very photographs the oil companies introduced. Likewise, why do Billiton and Devon construct cattle guards on private lands held under lease?

The bottom line as Robert Oliver stated, is that Billiton and Devon want to be treated different than ordinary voting citizens of DeWitt County. They attempt to point out how magnanimous they have been to DeWitt County and its citizens, yet there are huge numbers of citizens that are contesting their trustworthiness or having to file lawsuits against them for shorting landowners on royalties and/or running over mineral owner rights. District Attorney Mike Sheppard, his family, and large numbers of mineral owners have lawsuits alleging that these two very oil companies are failing to abide by their agreements. Why is this? They are huge corporations whose existence is to maximize profits for their shareholders. They both started their addresses to you, the Commissioners, trying to win favor by claiming they contribute so much to the County and its citizenry. But in reality, there is absolutely no allegiance to the citizens of DeWitt County and if offered fair consideration, they would sell out and move from DeWitt County tomorrow. Furthermore, after they substantially deplete the Eagle Ford, they will move on and sell to others who will attempt to hold these leases as long as they can. Billiton and Devon are in DeWitt County to make money for themselves and not for the welfare of local citizens. Yet the Oliver-Hamilton and the Zgabay families have been law abiding for generations and will continue to be substantial, law abiding individuals who live up to their obligations and not "short change" their fellow neighbors. In fact Mr. Oliver and Mr. Zgabay informed the Commissioners Court that they will reimburse the County for the material costs of the disputed East-West portion of Oliver Road.

One would think Billiton would have learned its lesson with their payment of a fine of \$25,000,000 under the Foreign Corrupt Priorities Act for illegally entertaining governmental officials. Likewise why would these two oil companies whose corporate officials make more than 100,000,000 a year be claiming their contributions to DeWitt County that they are deducting from their taxes be worthy of consideration unless this is a claim for being treated differently?

Finally, the oil companies state that the interference with the Zgabays' and Olivers is "minimal". Mark and Betty Zgabay just wish that these city lawyers and foreign and out of state corporate officials who make that claim would sit on their front porch during the summer months. After 24 hours, they, like the Zgabays', would be covered in dust and coughing and sneezing continually like the Zgabays'. "Minimal impact"? Easy for some to contend who do not have to live under these conditions.

Let's ask Mr. Oliver's and his tenant if the costs associated of repairing fences along the East-West portion of Oliver Road is "minimal." Let's discuss the speed of which the young

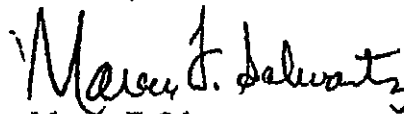
April 28, 2016

Page 5

truck drivers, employees and agents speed between Bellevue Cemetery Road and the plant's entry every day. Is this "minimal"? If, as they claim, only five trucks (or fewer) use this disputed road on a daily basis, then using the undisputed northern part of Oliver Road or Elder Road (a paved county road) should be a "minimal" inconvenience to them. Furthermore, on a paved road there is none of the massive dust issues that harm these landowners. In fact the dust is so substantial that in places the Olivers' new fences sag between posts with all the caked on "dust". More importantly, dust is so substantial that the native grass is caked with dirt with loss of grazing.

In closing, when Mr. Zgabay and Mr. Oliver report to Billiton and Devon the problems associated with speed, dust, health and property damage --guess what? They denied that their employees cause the problems and merely state "you know how truck drivers are." Billiton and Devon do want to be privileged and have rights greater than the ordinary voting longtime DeWitt County citizens, yet cast the cost, inconvenience, health issues and financial detriment upon the ordinary citizens. Do not become distracted, Billiton and Devon will disappear as quickly as they came onto the drilling scene. This Petition boils down to a simple matter, Devon and Billiton are attempting to utilize their financial clout and might, through spending huge sums for attorneys and otherwise, to prevent the Petitioners from alleviating many problems for use by a mere "five or fewer trucks a day" over the disputed East-West portion of Oliver Road rather than merely using the paved Elder Road or the undisputed Northern portion of Oliver Road.

Sincerely,

A handwritten signature in black ink, appearing to read "Marcus F. Schwartz". The signature is fluid and cursive, with the first name "Marcus" being the most prominent part.

Marcus F. Schwartz

MFS:db

SPHR/10