

From: Susanne Lawton, General Manager  
To: Public and PSD Customers  
Date: August 9, 2017  
Re: Flowing Springs Collection System Project Easements

Here is the process used to attain the necessary easements for the project:

*(This process cannot be followed for railroads.)*

- 1: Offer our standard \$2.00/ linear foot for easement across property along with the easement document which is prepared by a land use lawyer.
- 2: If the customer accepts, have the signed documents filed at the courthouse and pay the property owner the agreed amount.
- 3: If the customer declines, we have our appraiser do an appraisal and file with the court for condemnation. To file, we must include the appraisal and a check for the value stated in the appraisal, plus a filing fee of \$200 and service fees of about \$150 with the application.
- 4: If the customer wishes to have the court reconsider the value, they petition the court to hold a hearing before freeholder commissioners, a group of local people, to consider the value of the easement.
- 5: The court rules on the value as determined by the freeholder commissioners and the cost of the hearing is added to the total cost. *(As of this date, August 9, 2017, the District has never gone this far on any of our easements that needed to be condemned.)*
- 6: The decision can be appealed to the circuit court for rehearing and 12 new commissioners, and then if necessary, to the WV Supreme Court.
- 7: When the decisions are final, condemnation takes place which includes payment to the land owner and court, and filing of paperwork at the courthouse.

Here is the process used to attain railroad licenses:

*(Please notice, they are not easements, but are licenses.)*

The agreements with railroads are actually licenses, not easements. They are always treated differently than easements and were referred to as permits in the documentation developed for the project. The "ownership" of railroad lands is a specialized area of law and I will not go into that other than to say that the railroad does not necessarily own the land where the railroads are located. A lot of the railroad is constructed on a right of way, which was obtained by either one of several different acts of congress, or through federal and state powers of eminent domain.

In reference to the agreement with Norfolk Southern Railway Company, which was approved by the board on August 9, 2017, here is the background.

On May 11, 2016, acting as the General Manager, I signed an application for the "Pipeline Occupancy" on behalf of the District as is required to fulfill my administrative duty for the project. The application was submitted on behalf the District by Thrasher Engineers and was handled by a company called AECOM. They handle the review of right of way license agreements for several railroads. On April 24, 2017, AECOM sent Thrasher, a license agreement for the crossing and parallel occupancy for the project.

The District has never gotten an appraisal for a railroad crossing as Districts and Municipalities have very little to bargain with. The District never assigned the railroad crossing an easement number because it is a license and not an easement.