

**BEFORE THE  
OIL & GAS COMMISSION**

MIKE JOHNSON,	:	Case No. 772
	:	
Appellant,	:	
	:	Review of Chief's Order 2006-105
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<b><u>ORDER OF COMMISSION</u></b>
MANAGEMENT,	:	<b><u>DENYING MOTION TO</u></b>
	:	<b><u>SUPPLEMENT RECORD</u></b>
Appellee.	:	

Appearances: Mike Johnson, Appellant *pro se*; Kate Mosca, Assistant Attorney General, Counsel for Appellee  
Division of Mineral Resources Management.

Date Issued: 2/21/07

This matter came before the Oil & Gas Commission upon appeal by Mike Johnson ["Johnson"], from Chief's Order 2006-105. This Chief's Order suspended Johnson's oil & gas operations within the State of Ohio, until the legally-required bond was posted in support of these operations.

On February 1, 2007, this cause came on for hearing before three members of the Oil & Gas Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

In his Notice of Appeal from Chief's Order 2006-105, Mike Johnson alleged that the lease name and well permit number referenced by the Division in this, and previous orders, caused confusion, and that until August of 2005, Mr. Johnson was unaware of what well was being addressed in the Division's orders. Mr. Johnson maintained that the correct well identification is the Starr #1 Well, permit 145A1. The Division referred to the well as the H.V.P #1 Well, permit #1983 (or #073-6-1983). At hearing, evidence regarding the correct permit identification, and the parties' knowledge of what well was at issue, was entered onto the Record.

On February 9, 2007, eight days after the merit hearing was concluded, the Division submitted to the Commission a Motion for Leave to Supplement Record. Accompanying this Motion were a letter and two annual production statements, which the Division asserts establishes Mr. Johnson's familiarity with the API permit number for the well at issue.

The Commission's procedural rules do not specifically address the submission of additional evidence following a merit hearing. However, the general criteria for acceptance of additional evidence requires that the evidence be newly discovered, and that such evidence could not have been ascertained prior to hearing.

Mr. Johnson's Notice of Appeal clearly put the Division on notice that the well identification would be an issue in this appeal. Thus, the Division should have been prepared to present any evidence addressing the well identification, and any evidence of Johnson's knowledge of the correct well permit number. The letter and annual statements attached to the Division's Motion to Supplement date from 2002, 2004 and 2005. Therefore, these items existed prior to the February 1, 2007 merit hearing and could have been ascertained in advance of that hearing. The Commission **FINDS** that all parties to this matter were afforded a full and fair hearing, which included an opportunity to produce any relevant documentary or testimonial evidence. The Commission further **FINDS** that the supplemental evidence proposed for admission by the Division does not qualify as "newly discovered."

## **ORDER**

The Oil & Gas Commission has read and considered the Appellee's Motion for Leave to Supplement Record. The Commission **FINDS** that the Appellee's argument are not well taken. WHEREFORE, the Appellee's Motion is hereby **DENIED**.

*see attached sheets*

\_\_\_\_\_  
WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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JAMES H. CAMERON

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M. HOWARD PETRICOFF, Secretary

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TIMOTHY C. McNUTT

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## ORDER

The Oil & Gas Commission has read and considered the Appellee's Motion for Leave to Supplement Record. The Commission FINDS that the Appellee's argument are not well taken. WHEREFORE, the Appellee's Motion is hereby DENIED.

  
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WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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JAMES H. CAMERON

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M. HOWARD PETRICOFF, Secretary

\_\_\_\_\_  
TIMOTHY C. McNUTT

Mike Johnson  
Appeal #772

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## **ORDER**

The Oil & Gas Commission has read and considered the Appellee's Motion for Leave to Supplement Record. The Commission FINDS that the Appellee's argument are not well taken. WHEREFORE, the Appellee's Motion is hereby DENIED.

\_\_\_\_\_  
WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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JAMES H. CAMERON

  
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TIMOTHY C. McNUTT

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## **ORDER**

The Oil & Gas Commission has read and considered the Appellee's Motion for Leave to Supplement Record. The Commission **FINDS** that the Appellee's argument are not well taken. **WHEREFORE**, the Appellee's Motion is hereby **DENIED**.

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WILLIAM J. TAYLOR, Chairman

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TIMOTHY C. McNUTT

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JOHN A. GRAY

  
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M. HOWARD PETRICOFF, Secretary

Mike Johnson  
Appeal #772

**DISTRIBUTION:**

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**NOTICE OF DECISION OF OIL & GAS COMMISSION**

<b>To:</b> District Office	<input checked="" type="checkbox"/> Scott Kell	<input type="checkbox"/> Dale Vitale
<input checked="" type="checkbox"/> Cambridge	<input checked="" type="checkbox"/> Joe Hoerst (Cambridge)	
<input checked="" type="checkbox"/> Jackson	<input type="checkbox"/>	<input checked="" type="checkbox"/> Other AAGs
<input type="checkbox"/> New Philadelphia	<input type="checkbox"/>	<u>Ray Studer;</u>
<input type="checkbox"/> Salem	<input type="checkbox"/>	<u>Mark Bonaventura,</u>
	<input type="checkbox"/>	<u>Molly Corey</u>
		<input checked="" type="checkbox"/> <u>Inspector</u>
		<u>Dan Goins (Jackson)</u>
		<input checked="" type="checkbox"/> <u>Inspector Brent Bear</u>
		<u>(Jackson)</u>
		<input checked="" type="checkbox"/> <b>Decision Notebook</b>
<b>From:</b>		
<input type="checkbox"/> Mark Bonaventura	<input checked="" type="checkbox"/> Kate Mosca	<input type="checkbox"/> Molly Corey

Case Name: Mike Johnson v. DMRM  
 Docket No.: 324776  
 Case No.: Appeal #772

Permit No.  
 Decision Date: 02/21/07  
 Commission/Court of: Oil & Gas

**ADMINISTRATIVE ACTION AFFECTED**

<input type="checkbox"/> NOV _____	<input type="checkbox"/> CPA _____	<input checked="" type="checkbox"/> Chief's Order 2006-105
<input type="checkbox"/> Cessation Order _____		<input type="checkbox"/> Other _____
<b>How affected:</b>	<input checked="" type="checkbox"/> Action Affirmed	<input type="checkbox"/> Action Vacated
	<input type="checkbox"/> Action Modified	<input type="checkbox"/> Appeal Withdrawn
	<input type="checkbox"/> Other _____	

**FURTHER ADMINISTRATIVE ACTION REQUIRED**

<input checked="" type="checkbox"/> Make notation to records. Decision self-executing. Issuance of further documents by Division not required.
<input type="checkbox"/> Vacate Administrative Action.
<input type="checkbox"/> Modify Administrative Action as follows: _____
<input type="checkbox"/> Appeal time expires on _____
<input type="checkbox"/> Do not release bond until after such date _____
<input type="checkbox"/> Certify claim if no appeal taken and penalty not paid _____
<input type="checkbox"/> Note for your records, but proceed as usual unless and until notified otherwise.
<input type="checkbox"/> Administrative follow-up required. See _____
Action due date: _____
Action required: _____
<b>For:</b> <input type="checkbox"/> Bonding <input type="checkbox"/> Permitting <input type="checkbox"/> Enforcement
<input type="checkbox"/> Other _____

# BEFORE THE OIL & GAS COMMISSION

MIKE JOHNSON,	:	Case No. 772
	:	
Appellant,	:	
	:	Review of Chief's Order 2006-105
-vs-	:	
	:	
DIVISION OF MINERAL RESOURCES	:	<b><u>FINDINGS, CONCLUSIONS</u></b>
MANAGEMENT,	:	<b><u>&amp; ORDER OF THE</u></b>
	:	<b><u>COMMISSION</u></b>
Appellee.	:	

Appearances: Mike Johnson, Appellant *pro se*; Kale Mosca, Assistant Attorney General, Counsel for Appellee Division of Mineral Resources Management.

Date Issued: February 21, 2007

## PROCEDURAL HISTORY

This matter came before the Oil & Gas Commission upon appeal by Mike Johnson ["Johnson"], from Chief's Order 2006-105. This Chief's Order suspended Johnson's oil & gas operations within the State of Ohio, until the legally required bond was posted in support of these operations. Johnson complied with this Chief's Order, by posting bond.

On November 8, 2006, the Appellee Division of Mineral Resources Management filed with the Commission, a Motion to Dismiss this appeal. In its Motion, the Division argued that Johnson's compliance with Chief's Order 2006-105, and specifically Johnson's posting of bond, rendered this appeal moot. Mr. Johnson responded to the Division's Motion. On December 8, 2006, the Commission denied the Division's Motion, and allowed this matter to proceed to merit hearing.



On February 1, 2007, this cause came on for hearing before three members of the Oil & Gas Commission. At hearing, the parties presented evidence and examined witnesses appearing for and against them.

## ISSUE

The issue presented by this appeal is: **Whether the Chief acted lawfully and reasonably in issuing a suspension order to Johnson and in requiring Johnson to post replacement bond, following the forfeiture of the bond supporting Johnson's oil & gas operations.**

## THE APPLICABLE LAW

1. Pursuant to O.R.C. §1509.36, the Commission will affirm the Division Chief if the Commission finds that the order appealed is lawful and reasonable.

2. O.R.C. §1509.07 provides *inter alia*:

. . . [A]n owner of any well, before being issued a permit under section 1509.06 of the Revised Code, shall execute and file with the division of mineral resources management a surety bond conditioned on compliance with the restoration requirements of section 1509.072, the plugging requirements of section 1509.12, the permit provisions of section 1509.13 of the Revised Code, and all rules and orders of the chief relating thereto, in an amount set by rule of the chief.

The owner may deposit with the chief, instead of a surety bond, cash in an amount equal to the surety bond as prescribed pursuant to this section or negotiable certificates of deposit or irrevocable letters of credit, . . . having a cash value equal to or greater than the amount of the surety bond as prescribed pursuant to this section.

3 O.R.C. §1509.12 provides in part:

Unless written permission is granted by the chief, any well which is or becomes incapable of producing oil or gas in commercial quantities shall be plugged. . . . When the chief finds that a well should be plugged, the chief shall notify the owner to that effect by order in writing and shall specify in such order a reasonable time within which to comply. No owner shall fail or refuse to plug a well within the time specified in the order. . . .

4. O.R.C. §1509.071 provides for the forfeiture of bond:

(A) When the chief of the division of mineral resources management finds that an owner has failed to comply with the restoration requirements of section 1509.072, plugging requirements of section 1509.12, or permit provisions of section 1509.13 of the Revised Code, or rules and orders relating thereto, the chief shall make a finding of that fact and declare any surety bond filed to ensure compliance with those sections and rules forfeited in the amount set by rule of the chief. The chief thereupon shall certify the total forfeiture to the attorney general, who shall proceed to collect the amount of the forfeiture.

## SUMMARY OF PROCEEDINGS

1. Mike Johnson owns several oil & gas wells in the State of Ohio, including a well known as the "Starr #1 Well," or the "H.V.P. #1 Well." This well is located in Hocking County, Ward Township, Ohio. The American Petroleum Institute ["API"] identification number for this well is 073-6-1983. The name "H.V.P." or "Starr" in the well identification, refers to the name of the leaseholder where the well is located. The API number, 073-6-1983, or simply 1983, is a unique identification number, utilized by the Division to identify this specific well.

2. In 1996, Mike Johnson filed with the Division of Mineral Resources Management an irrevocable letter of credit from the Peoples National Bank of New Lexington, Ohio, in the amount of \$15,000. This "blanket bond" was filed in accordance with O.R.C. §1509.07.

3. In October 2003, the Division of Mineral Resources Management conducted an inspection of well #1983. The Division determined that this well was incapable of production in commercial quantities, and issued a Notice of Violation ["NOV"]. The Division's finding was based upon the lack of production equipment at the well, and the fact that flow lines from the well to the shipping tank were not connected. The shipping tank is located approximately 3/8 of a mile from the well. Inspector Goins testified that he has visited well #1983 several times since 2003, and that during this entire period of time the flow lines have been disconnected. During the October 2003 inspection, well #1983 was not marked with any well identification information. The Inspector was aware that this well was located in the vicinity of an H.V.P. lease, and that Johnson owns a well located on an H.V.P. lease. With no identifying information, the Inspector assumed that well #1983 was located on the "H.V.P." lease, and the inspector referred to the well as the "H.V.P. #1 Well." Mr. Johnson and Division Inspector Goins discussed the condition of well #1983 in April 2004. Both testified that, at the April 2004 meeting, there was no confusion as to the identity of the well at issue. The NOV was not abated.

4. On May 21, 2004, the Division issued Chief's Order 2004-39 [the "plug order"] to Mike Johnson. This Chief's Order found well #1983 to be incapable of production in commercial quantities. Chief's Order 2004-39 required Johnson to either plug or produce well #1983. In the plug order, well #1983 was again identified as the "H.V.P. #1 Well." The certified mailing of Chief's Order 2004-39 was received by Mr. Johnson. Johnson failed to comply with Chief's Order 2004-39. This Chief's Order was not appealed to the Oil & Gas Commission.

5. On August 16, 2005, Chief's Order 2005-76 [the "forfeiture order"] was issued to Mike Johnson. This Chief's Order required the forfeiture of Johnson's blanket bond, based upon Johnson's failure to plug well #1983. In the forfeiture order, well #1983 was again identified as the "H.V.P. #1 Well."

6. On August 30, 2005, Mike Johnson met with Division Manager Joe Hoerst, and discussed the identity of the well that is the subject of the plug and forfeiture orders. Both confirmed through testimony that the well identified by the Division under the lease name "H.V.P." and by Johnson under the lease name "Starr," were one and the same. Johnson and Goins testified that, on August 30, 2006, both were aware of which well was in controversy.

7. Permit #1983 was correctly referenced in all of the enforcement and inspection documents since 2003.

8. On August 30, 2005, Johnson and Division Manager Joe Hoerst also discussed the fact that the certified mailing of Chief's Order 2005-76 [the "forfeiture order"] had not been received by Johnson. Hoerst testified that he showed a copy of this Order to Johnson. After discussion, Mr. Johnson's mailing address was updated. Thereafter, on September 7, 2005, Chief's Order 2005-76 was re-mailed by certified mailing to Mr. Johnson at a corrected address. The second certified mailing of Chief's Order 2005-76 was returned to the Division as unclaimed. On October 27, 2005, the forfeiture order was mailed by Regular U.S. Mail to Mr. Johnson at his new address. This mailing was not returned to the Division. Chief's Order 2005-76 was based upon Johnson's failure to plug or produce well #1983. Chief's Order 2005-76 was not appealed to the Oil & Gas Commission.

9. In September 2005, certain improvements to well #1983 were made. Mr. Johnson put a head and a radiator on the pumping unit engine for this well. Mr. Johnson also placed identification information on the well and on its shipping tank. However, the flow lines between the well and the shipping tank remained parted and the well remained incapable of producing oil in commercial quantities.

10. Johnson testified that after August 30, 2005, he believed that he had complied with Chief's Order 2005-76. No forfeiture occurred for approximately one year. A run ticket, showing that oil was shipped from the tank associated with well #1983 on August 25, 2006, was produced by Mr. Johnson. Mr. Johnson claimed that only one shipment was made between October 2003 and August 2006.

11. On August 15, 2006, the \$15,000 blanket bond supporting Johnson's operations was forfeited to the Division. Thereafter, the Johnson operations were unbonded.

12. On August 23, 2006, Chief's Order 2006-105 [the "suspension order"] was issued to Johnson. This Order suspended Johnson's oil & gas operations, and required the posting of a new bond. The certified mailing of this Order was received at the Johnson household. This Order was appealed to the Oil & Gas Commission and is the subject of the instant case.

13. Mike Johnson has reposted bond in the amount of \$15,000, in support of his oil & gas operations.

## DISCUSSION

Before being issued a permit, the owner of any oil & gas well in the State of Ohio must post a performance bond. The purpose of the bond is to ensure that the well owner complies with the laws and rules regulating the production of oil & gas. The bond is also intended to provide funds to insure the plugging of non-productive wells. See O.R.C. §1509.071. O.R.C. §1509.071 specifically states that the performance bond is conditioned upon compliance with the plugging requirements of O.R.C. §1509.12. O.R.C. §1509.12 requires the plugging of wells that are determined to be incapable of producing oil or gas in commercial quantities, and are not being used for domestic purposes. This plugging requirement is intended to protect both the environment and other oil & gas producing strata.

To determine whether the Division Chief has reasonable grounds to believe that a well is incapable of producing oil or gas in commercial quantities, this Commission has developed a five-point test. State of Ohio v. Baldwin Producing Corporation, No. 76AP-892 (Court of Appeals, Franklin County [March 10, 1997]). The Baldwin test requires consideration of five indicia of commercial production, which are:

1. Has the owner of the well requested permission from the Chief for the well to stand idle and presented firm, reasonable plans, which he is capable of carrying out, to produce oil or gas in commercial quantities?
2. How recently the well has, in fact, produced oil or gas in commercial quantities and how much oil or gas has been sold?
3. Is the well equipped sufficiently with both surface and in-hole equipment to allow for commercial production?
4. How recently have actual good faith on-site attempts been made to produce the well in commercial quantities?
5. Has the state caused investigation to be made on the well site?

See also: Lake Underground Storage v. Mason, appeal #487 (June 27, 1996); Alsid Oil & Gas v. Division, appeal #650 (January 11, 1999).

Unbonded oil & gas operations are simply not allowed under Ohio law. Thus, following the forfeiture of Johnson's bond, new bond needed to be posted in order for Johnson to continue to operate. Based upon the facts of this matter, the Commission **FINDS** that the issuance of Chief's Order 2006-105, suspending operations and requiring the re-posting of bond, was both lawful and reasonable.

## **FINDINGS OF FACT**

1. Johnson's well #1983 is incapable of producing oil in commercial quantities because flow lines from the well are parted and cannot transport oil.
2. Well #1983 has not commercially produced oil since at least 2003.
3. Johnson has received actual or constructive notice of all of the relevant enforcement orders addressing well #1983. Johnson received notice of the plug order on June 4, 2004. Johnson received notice of the forfeiture order on August 30, 2005. Johnson received notice of the suspension order on September 1, 2006.
4. Johnson has not complied with the enforcement order issued on well #1983.

## **FINDINGS OF LAW**

1. Pursuant to O.R.C. §1509.36, the Commission finds the Division Chief's order under appeal to be lawful and reasonable.
2. The issuance of Chief's Order 2006-105, suspending Johnson's oil & gas operations and requiring Johnson to re-post a bond in support of these operations, was not unreasonable or unlawful.

In the Baldwin appeal, the Commission held, and the courts affirmed, that the word "incapable" does not mean that there was no "technical or proprietary hope" that the well will produce in commercial quantities. Rather, the examination focuses on whether the well has recently produced commercial quantities of oil or gas, and whether the well is equipped for such production.

The evidence produced at hearing in this appeal, suggests that well #1983 had not produced oil in commercial quantities since at least 2003. One run ticket from August 2005 was presented in evidence, but this ticket establishes only that a small amount of oil was removed from the shipping tank during the period at issue. This does not constitute commercial production.

This Commission has consistently held that lack of surface and/or in-hole equipment necessary for commercial production indicates that a well is incapable of production. See Gary Harris & Group Maintenance v. Division, appeal #714 (October 27, 2003); Chieftain Energy Corp. v. Division, appeals #734, 735 & 741 (February 6, 2006). Testimony and photographs produced at hearing revealed that well #1983 was not equipped for commercial production, in that the supply lines from the well to the storage tank were not connected.

The bond forfeiture provision of O.R.C. §1509.071 states that failure of an owner to comply with an order to plug or produce an unproductive well is grounds for forfeiture of the operator's blanket bond. In this matter, Johnson's bond was forfeited in 2005 after Johnson had failed to comply with the 2004 plug order. No appeal was taken from either the plug order or the bond forfeiture order.

Once bond is forfeited, and consistent with the bonding requirements of O.R.C. §1509.071, the Division may suspend oil & gas operations, until new bond is in place. Chief's Order 2006-105, the order under appeal, is such a suspension order.

The evidence produced at hearing, suggests that well #1983 has not produced in commercial quantity since at least 2003. Therefore, the 2004 plug order, and the 2005 forfeiture order, were appropriately issued. Once bond was forfeited under Chief's Order 2005-76, the Division suspended Johnson's operations and required that bond be reposted.

Mike Johnson  
Appeal #772

## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2006-105.

Date Issued: 2/21/07

see attached sheets  
WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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JAMES H. CAMERON

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M. HOWARD PETRICOFF, Secretary

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TIMOTHY C. McNUTT

## INSTRUCTIONS FOR APPEAL

This decision may be appealed to the Court of Common Pleas for Franklin County, within thirty days of your receipt of this decision, in accordance with Ohio Revised Code §1509.37.

### DISTRIBUTION:


Mike Johnson, Via Fax [740-454-5057] & Certified Mail #: 7000 0600 0028 2172 1228  
Kate Mosca, Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6350



## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2006-105.

Date Issued: \_\_\_\_\_

  
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WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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Kate Mosca, Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6350

Mike Johnson  
Appeal #172

## ORDER

Based upon the foregoing findings of fact and conclusions of law, the Commission hereby **AFFIRMS** the Division's issuance of Chief's Order 2006-105.

Date Issued: \_\_\_\_\_

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WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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JAMES H. CAMERON

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M. HOWARD PETRICOFF, Secretary

  
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TIMOTHY C. McNUTT

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Kate Mosca, Via Fax [614-268-8871] & Inter-Office Certified Mail #: 6350

Mike Johnson  
Appeal #772

## ORDER

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Date Issued: \_\_\_\_\_

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WILLIAM J. TAYLOR, Chairman

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JOHN A. GRAY

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JAMES H. CAMERON

  
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M. HOWARD PETRICOFF, Secretary

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