

# EPCAMR



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February 12, 2013

### Re: Work Progress Report on the Hicks Creek AMR Natural Stream Channel Restoration Grant

## Eastern PA Coalition for Abandoned Mine Reclamation- Hicks Creek AMR Natural Stream Channel Restoration Grant

Updated Work Progress Report-PD060048 (March 5, 2012 through February 12, 2013)

- On 3-6-2012, EPCAMR submitted a Progress Report and Reimbursement that detailed progress on the Project from January 2010 through early March of 2012; Skelly & Loy have not made any revisions or adjustments to the restoration plan to date; The most recent PDF of the drawings can be found using this link which is also attached:  
[http://www.skellyloy-qis.com/downloads/Hicks\\_Creek\\_\(2010-03-08\).pdf](http://www.skellyloy-qis.com/downloads/Hicks_Creek_(2010-03-08).pdf)
- On 3-7-2012, Dennis Palladino, our Project Officer informed us that he would process the Invoices; EPCAMR Executive Director informed Dennis that we have a meeting on 3-27-2012 on the project and for them to look at the draft design; They have an issue with one landowner on the opposite side of the Creek (Capitano) that may be unresolved and we need to find out what's going on; We believe it has to do with the GSA Flood control basin up there off of Slocum Ave, but we are not sure if it's that or it's an easement or takings issue
- On 3-7-2012, EPCAMR submitted a revised letter on our letterhead requesting a transfer of funds from the Construction Category to the Salaries and Benefits Category to cover expenses for this reimbursement periods submitted; EPCAMR submitted that letter on 3-8-2012
- On 3-12-2012, the PA DEP Grant Center asked our Project Officer if we needed another extension through June 30, 2013 and we responded that we did given the situation that Exeter Borough was in with Mr. Capitano and since we wouldn't know what the situation was until the 3-27-2012 meeting; EPCAMR will prepare the letter requesting the extension on March 28th, the day after we meet with Exeter Borough at their work session to find out what is going on with the Capitano property that is within our project area towards the lower end of the basin; If the property is in some sort of litigation, we may need to shorten up our channel restoration project by a few hundred feet, if he is unwilling to allow us to access his property for the lower stretch of the project; It will be a benefit to him and EPCAMR wants to convince him, but if he is in active litigation with the Borough, we are not sure what we will do. We have been trying to reach him separately, after talking with the Borough Council, but we are having difficulty contacting him.

EPCAMR thinks we will need the extension to get the permit reviews completed for the 102 and 105 from the PA DEP and the Luzerne Conservation District, along with the proper bidding process; EPCAMR worked on and completed an extension letter officially on our letterhead and forwarded it to Dennis with the justifications for the extension before the April 5, 2012 deadline that they informed us of after having attended the 3-27-2012 meeting with the Exeter Borough and members of their Planning Commission with our engineer, Gerald Longenecker, from Skelly & Loy

- On 3-27-2012, the PA DEP Grant Center approved the transfer of Construction money into Salaries; Dennis processed the reimbursement paperwork; EPCAMR also attended the meeting that evening with Exeter Borough Council at their Work Session with members of the Planning Commission present; EPCAMR Executive Director and Gerald Longenecker, our Engineer from Skelly & Loy met with the Borough Council and took up nearly 1/2 hour explaining the project to them and the rationale for the natural stream channel design construction with the series of step pools to reduce the velocity of the flow coming down the channel that will reduce the sediment load in the flood debris basin; Lots of questions were asked and lots of questions answered to the best of our ability; However, they still would like us to now submit our design before their Planning Commission for approval and a copy to the Luzerne County Planning Commission for approval and comments;
- There still was no agreement or clear direction provided to us on Mr. Capitano's property because they were still having legal issues with him related to a previous project for the construction of the Storm Water Debris basin; EPCAMR will have to contact the Borough to get the Land Development application from their Planning Commission, complete it, and forward it off to both the Exeter Borough Planning Commission and the Luzerne County Planning Commission, for comment and review while we send it to the Luzerne Conservation District for their review for administrative completeness under Chapter 102; Once the Planning Commission, Borough Engineer, Luzerne Conservation District, and County Engineer reviews it, EPCAMR believes the Planning Commission will give their approval of the project to Council for us to proceed, although it has already been given prior written approval by the previous Zoning Officer that is no longer with the Borough; There is a great possibility that the construction design plans will change before we can submit to the above mentioned Commissions and the Conservation District
- On 3-30-2012, EPCAMR informed our Project Officer, Dennis Palladino, PA DEP BANR, through a letter, and an e-mail to our Engineering Firm, Skelly & Loy, through one of our Project Manager's, Mike Lower, P.E., that Gerald and EPCAMR attended the Exeter Borough Council Meeting on 3-27-2012 to update them on the project and answer any questions that they had that we could answer at the time and questioned for over a half hour at the meeting; Flooding is on their mind, and we tried to alleviate those concerns by letting them know that we are trying to deal with the sediment issues, the velocity of the flows coming down the mountain from the headwaters, and that we not addressing flooding concerns directly with this project, and instead, dealing with the severe erosion, streambank stabilization, and keeping a focus on reducing Exeter Borough's operation and maintenance costs for their lower debris basin; Nevertheless, we were open and transparent about the entire project, the delays, the extensions, the number of months that EPCAMR has had to wait for extensions to be approved, and the time it had taken just to get a contract in hand, during the first year of the project and the issues with not being able to contact Mr. Capitano directly;

- However, they want EPCAMR to submit the project to their Planning Commission first, who will then have their Borough Engineer review it and make comments, and EPCAMR believes that we will also have to send a copy to the Luzerne County Planning Commission for review as well before their Planning Commission will recommend to the Council to approve and support us going forward with the Project; They are an entirely new Council from when we started the project; EPCAMR has made a request for an Application for Land Development from their Planning Commission to fill it out and will print off another set of Construction Plans to accompany it; The Exeter Borough Council informed EPCAMR that the best thing to do right now is get it through this process before talking with the Capitano property owner about obtaining his permission to construct portions of the step-pools on his property. EPCAMR asked Mike to look at the Submission requirements to see if we need to add anything to our standard draft design; (Call Before You Dig? Wetlands Statement?, etc.) and informed him of EPCAMR's intention to put in the extension letter on the project to the PA DEP because of this expected delay that we are going to have to go through this review process with the new Council and their Planning Commission
- On 3-30-2012, Mike Lower, P.E., with Skelly & Loy, informed EPCAMR that they can certainly review the SALDO, and report back to you on additional requirements; They believe that since this request is beyond their current scope-of-work, was it OK to track these efforts on an hourly basis in addition to our current contract; EPCAMR informed Mike to hold off for right now on reviewing the SALDO until we talk with the Zoning and Planning Commission Chair the following week; Then we can talk about the adjustments to the hourly work or an amendment to the contract with Skelly & Loy since it is probably in need of an amended date to continue working. EPCAMR pulled from the files our Land Use Planning Form that was a part of the initial grant application related to the MPC (Municipal Planning Code) and their SALDO that was signed off by Ed Farrell, the Exeter Borough Zoning Officer at the time of the submission of our grant. EPCAMR will see what they have to say about submitting further information since they have already signed off in support of the project. However, I think they may still need the plan submission; The Exeter Borough Council owns one of the parcels of the property where our stockpile location will be
- On 4-1-2012, Karen Szwast forward to EPCAMR a Survey Plot for the debris basin project at Hick's Creek above Slocum Ave; The slope failure area is, for the most part, not contained within the permanent easement area of the flood control project; However, the bank still needs to be repaired and restored; Harold believes Exeter Borough may only need a temporary easement from the property owner, Mr. Capitano to conduct the work, as no permanent structure will be constructed; The edge of the washout area and the permanent easement were marked in the field, as indicated on the attached drawing ([HICKS-BASIN.pdf](#))
- On 4-3-2012, Karen Szwast, Grant Writer for Exeter Borough that has been managing another Project for the Borough, the Slocum Basin Project had requested an extension for another PA DEP Growing Greener project through June 30, 2013 as well; The grant funded stabilization of the Slocum Basin rear bank; The bank continues to erode and Mr. Capitano continues to lose land; Exeter continues to be required to remove the sediment from the basin; Mr. Capitano is also the property owner that EPCAMR has not able to contact.; Mr. Capitano's non-cooperative spirit is causing delay or inability to construct 2 worthwhile construction projects within the Borough; Karen, in a letter to the Borough Council presented the following: Ideally, Exeter Borough could purchase Mr. Capitano's land as a conservation easement and complete both bank restoration projects; A letter written by Mr. Capitano's Attorney to Exeter Borough's Attorney in 2010 stated that he believed the Borough owed him \$40,000 for the easement taken

to build the Slocum Basin in early 2000's; If Council wishes, current Solicitor, Attorney Hassey can review and report the true value of the land taken and if the money was paid to Mr. Capitano

- EPCAMR was informed by Karen, through e-mail correspondence that she was told the following: Mr. Capitano's land was appraised at \$2,000 by a certified appraiser and the Borough raised several greenhouses in lieu of payment; This was not acceptable to Mr. Capitano; He continues to argue that his land can not be accessed due to the placement of the basin and that the PA DEP refused to place a bridge over the basin and he believed the Borough should pay for the entire parcel; To tier the bank and properly stabilize the area will require a temporary or permanent easement because it will be on Capitano's land; Karen presented several options to the Exeter Borough Council to consider:

**Options:**

1. A DCNR grant could pay for 50% of the appraised value of the land as an acquisition project, however, where the Borough would come up with the other 50% is unclear and the possibility that the grant would be extended beyond the June 30, 2013 deadline is remote.
  2. Take the land needed for the tiering by eminent domain (it is part of the flood control project that benefits many residents along Hicks Creek) but Exeter Borough Solicitor Hassey would have to be consulted about this option
  3. Construct the project by staying within the basin (ie: vertical wall of grouted rip rap or gabion basket); This will not be as good of a project as tiering the bank; Exeter Borough Council will want to discuss this option with it's Borough Engineer, Harold Ash; These options are more directly related to the Slocum Basin Project, but since they are in the same project area, upstream and downstream from the EPCAMR Natural Stream Channel Restoration Project, EPCAMR is going to be faced with the same property issues with Mr. Capitano that the Borough is having with him
- Harold Ash, Exeter Borough Engineer, from PennEastern Engineers, responded to Karen by providing her and EPCAMR with a more defined plan of the basin and surrounding area for our use; From the latest survey data PennEastern Engineers obtained, it doesn't look like they could do much stabilization or toe protection work without extending the work beyond the permanent easement area; He suggested that if Exeter Borough were to get an extension, they should proceed to prepare plans for the stabilization and toe protection measures that are necessary, and then, if need be, the Borough can proceed with condemnation of the required land area, should the Borough choose to go that route. Naturally, the suggestions being provided by Harold Ash, needs to be discussed with Council and the Borough Solicitor, and probably PA DEP, the original project's designers, for their input regarding the proposed stabilization project and work area limits; An Adobe Document map is attached with this Summary Report ([TOPO-LIDAR.pdf](#))
  - EPCAMR set up a meeting with Dominic Peppi from the Exeter Borough Planning Commission to have him look over our plans to see if we need to submit a full land development application; We still have an approval letter from the previous Zoning Officer, Ed Farrell, giving us the ok to proceed with the project that we are going to show him that will show that we are complimenting the Municipal Planning Code and their local ordinances in Exeter Borough

- On 4-16-2012, EPCAMR corresponded with Harold Ash, Exeter Borough Engineer and informed him of our conversation and meeting with Dominic Peppi, from the Exeter Borough Planning and Zoning Office he suggested that EPCAMR give him a copy of this project file electronically for the natural stream channel restoration project that EPCAMR had applied for several years ago and received funding from PA DEP Growing Greener to perform a design and engineering project on the section of Hicks Creek that was in an abandoned mine lands problem area, basically from the lower Ide's property down along Manor Care, through the Capitano property, and eventually into the flood debris basin, if construction funds would allow us to bring the natural stream channel design step/pools that far down the stream length (nearly 1200');
- EPCAMR is to the point where we believe that we want to submit the Plan for approval by the current Borough Council who suggested that we run into through Planning & Zoning first; EPCAMR attended last month's work session and public meeting to explain and update the project and the delays that we've had with permitting, obtaining formal extensions of the project due to the flooding in the Hicks Creek watershed, and other minor delays, but since several years have gone by and the majority of Council members have changed, we wanted to be open and transparent with the public about our continued efforts; We have a letter of support for the grant that was submitted and eventually awarded when Rich Murawski was on Council, and we have an administrative approval letter from the previous Zoning Officer, Mr. Farrell that was signed stating that our project meets the MPC Code and the SALDO for Exeter Borough, however, EPCAMR is not sure if we have to formally submit our draft design project at this time for a more detailed review and that is why we came to the Borough Engineer for assistance; Dominic has a hard copy of the plans and they were provided in PDF form from our engineering firm that has designed the project, along with the assistance of Borton-Lawson Engineering that had conducted the H & H; A copy of the H & H was provided to Harold Ash as well for his review and comment; EPCAMR would like to submit the final draft plan design to the Luzerne Conservation District for their administrative review, as well as the Luzerne County Planning Commission, but sough comments from (Exeter Borough), first, so we have less changes to make.
- Upon meeting with the Borough Council, it was suggested that we hold off on talking with Mr. Capitano, until we run the project through Planning & Zoning to see if there are any questions; This project will be constructed "in the dry" since the majority of the time during the year that section of stream doesn't flow. We don't know if we need to fill out a minor development application; EPCAMR resent another revised H & H Summary from Skelly & Loy received from Borton-Lawson on 4-23-2010 that focuses on the project reach; Their intent was to include this newer H&H with the permit application submission (which has been delayed due to the property owner negotiations); The Limit-of-Disturbance will be greater than 1 acre, on the order of 3.8 acres (See *Drawings G-1 and ES-1*)
- On 4-26-2012, EPCAMR was asked by Tom Bernard, PhD, P.E., Wilkes University to provide some technical assistance and guidance to an Environmental Engineering student, who will be interning with the Institute for Energy and Environmental Research at Wilkes and will be focusing on monitoring efforts in the Hicks Creek Watershed, under the faculty direction of Dr. Brian Whitman, Environmental Engineering & Earth Sciences Department; Piezometers were installed in Exeter Borough and West Wyoming to monitor the response of groundwater levels to rainfall events and the data collected with this equipment may be helpful to EPCAMR's mine pool work in the Wyoming Valley; EPCAMR agreed and informed Tom of the updates with the Hicks Creek Natural Stream Channel Restoration Project since he was heavily involved with the Hicks Creek Watershed Association for many years and is a resident of the Borough

- On 4-26-2012, EPCAMR received a response from Harold Ash that they were in receipt of the plans and report for the project that we had provided to them; They see no objections to the project, but will provide a formal letter to EPCAMR on the same shortly. Since the Borough Council requested that you submit and discuss the project with the Planning Commission, Harold suggested that EPCAMR contact Debra Serbin, the Borough Secretary/Treasurer and request that EPCAMR be placed on the agenda for the next Borough Planning Commission meeting, which was scheduled for Wednesday, 5-9-2012 at 7:00pm; EPCAMR can then present and discuss the project with the Planning Commission at that time; The Borough Engineer will provide our letter in advance of that meeting. The Exeter Borough Planning Commission can then offer their concurrence with the project

Some noted preliminary observations in regards to the proposed project from Harold:

- Since it appears that portions of your project area will be within the limits of the PA DEP Flood Protection Project DGS 182-5, in addition to the necessary permits for your project, the PA DEP Bureau of Waterways in Harrisburg will need to review the project prior to construction.
- Our office is currently working through a Growing Greener Grant for the stabilization of the northerly slope of the Slocum Avenue Debris Basin, but has been placed on hold due to land constraints with the property owner, Mr. Capitano. The permanent easement for the flood protection project does not cover the proposed work area. We anticipate similar problems for your project. We are planning to provide rock protection along the toe-of-slope and are also planning to re-grade the steep slope in this area
- Some of your project support areas near the Slocum Avenue Debris Basin may be located outside of the permanent easement area, and on the lands owned by Capitano
- Our office is also preparing plans for the cleaning of the debris basin from material deposited during the Hurricanes this past year. We have conducted survey work throughout the basin area and upstream to the limits of the permanent easement near the basin. Our intentions are to excavate and re-grade the basin area substantially to meet the original design/as-built grades of the flood protection project for the debris basin. This will be a separate project from that mentioned above for the stabilization of the slope area. The basin cleaning project will be bid later this Spring and will also include the Sturmer Street Sediment Basin on Hick's Creek.
- EPCAMR requested that Dennis Palladino, our PA DEP BAMR Project Officer attend the meeting along with our Engineer, from Skelly & Loy for the Planning Commission meeting, however, the Project Manager was not able to attend due to the State's overtime restrictions
- On 4-30-2012, EPCAMR confirmed with Gerald Longenecker, P.E., from Skelly & Loy that EPCAMR was on the agenda for the 5-9-2012 Planning Commission Meeting; Skelly & Loy noted that this is the first time he can remember ever having to go in front of the Planning Commission for a stream restoration project; The Zoning Officer is supportive as is the Township Engineer, but now they want EPCAMR to go to the Planning Commission for them to make a recommendation to the full Council to support the project again; EPCAMR didn't get a confirmation that we were on the Agenda until 5-7-12, a day before the meeting and then we had to inform our Engineer that we were in fact on the agenda, luckily, they were still able to attend the meeting at the Exeter Borough Building

- On 5-2-2012, EPCAMR reviewed an Invoice from Skelly & Loy (R08-0264-55254-Hicks Creek Reach 4 Restoration Project for Engineering Services) in the amount of \$540.00 for services between 3-21-2010 and 4-3-2012
- 5-9-2012 EPCAMR attending and presented at the Exeter Borough Planning Commission Meeting about the project for their consideration and approval; On 5-11-2012, Attorney Hassey from Exeter Borough asked if we can modify the engineering to address only those areas within the Borough's easement so that we don't lose the grants
- On 5-14-2012, following EPCAMR's meeting with the Exeter Borough Planning Commission, Harold Ash followed up with Attorney Hassey to explain the project further; The most severely eroded slope area lies beyond Exeter Borough's permanent easement (Station 0+00 to 1+00) as can be seen on the attached plan. Without the proper slope toe protection and re-grading, this slope will continue to erode during periods of moderate to heavy runoff within Hick's Creek; The portion of the failed slope area that is within Exeter Borough's permanent easement is not as severe; In order to provide the proper protection and resolution to the eroded slope problem, it appears that Exeter Borough needs to work outside of their permanent easement area on the lands of Mr. Capitano; Confining Exeter Borough's work to the existing permanent easement area will not resolve the majority of the problem at the basin site. The intent of the grant was to provide the slope protection and re-grading in order to reduce or eliminate this source of sediment and debris from entering the basin and jeopardizing the basin's function and the flood protection project; In addition, if a substantial amount of sediment and debris slides into the basin, as it had done in the past, it can cause a short-circuiting of the debris basin and force the Hick's Creek flow out of its banks in this area, across Slocum Avenue, and onto adjacent properties; This can result in extensive property damage and hazardous conditions for vehicular or pedestrian traffic along Slocum Avenue.
- The EPCAMR project is planned to provide stream stabilization along Hick's Creek from upstream areas downstream to the Debris Basin; This project will also need land owner cooperation and approval from Mr. Capitano in order to proceed; If we can get Mr. Capitano's cooperation, both projects can be coordinated to compliment each other, and provide of comprehensive protection project along this area of Hick's Creek, benefitting Exeter Borough, Mr. Capitano, and all of the residents along the downstream portions of Hick's Creek.
- The Borough has been trying to reach out to Mr. Capitano for the past two years through their previous Solicitor; however, it does not seem that much progress has been made. Without being able to work on Mr. Capitano's property, both projects are in jeopardy, and in turn, so is the Hick's Creek Flood Control project, and Exeter's related maintenance and operation costs; It appears that another request for cooperation to Mr. Capitano is in order, and if he is unwilling to do so in a realistic manner, then a pursuit of legal means to enable both projects to proceed would be justified; To this end, the basin slope project is in need of an extension of time for completion until June 2013, as has been requested of the State through PA DEP. The EPCAMR project has requested the extension as well; Based on the conditions at the site and the limits of the existing permanent easement, pursuing a project contained wholly within the permanent easement area would not adequately address the slope erosion and sediment/debris deposition problem as originally intended, and as such, would not be a justifiable expense on the taxpayers of the State, and in turn, the residents of Exeter Borough. We simply need to work on Mr. Capitano's property.
- On 5-14-2012, Karen Szwast, Exeter Borough Grant Writer informed EPCAMR that her Slocum Basin Project had been granted an extension until June 30, 2013.

- On 5-31-2012, EPCAMR received and reviewed another Invoice (R08-0264-55528-Hicks Creek Reach 4 Restoration) from Skelly & Loy for Engineering Services in the amount of \$1450.00 for services between 4-1-2012 and 5-12-2012
- On 6-7-2012, EPCAMR paid Skelly & Loy the \$1450.00 from the previous Invoice (55528)
- On 9-6-2012, EPCAMR received our extension letter officially from the PA DEP Grants Center with the new termination date of June 30, 2013
- On 10-11-2012, EPCAMR paid the previously submitted Skelly & Loy Invoice in the amount of \$540.00 (check #1468) due to an oversight on the part of EPCAMR
- On 1-4-2013, EPCAMR informed Karen and Exeter Borough that our EPCAMR Stream Channel Restoration Project from Growing Greener (PA DEP) was also extended until June 30, 2013. EPCAMR informed the other partners that we are having difficulty reaching Mr. Capitano directly.

Our Engineering Firm, Skelly & Loy can't finalize their design to move forward with a bid for construction unless we know for sure that Mr. Capitano's property can be included or will have to be excluded from the project scope. We want to give him the opportunity to see what types of structures that we are considering to put in place down the stream channel, much like we did for the Exeter Borough Planning Commission last year. EPCAMR does not have a personal contact for him nor his address. EPCAMR would like for these two projects to go hand in hand, otherwise, EPCAMR has the potential to have to turn back several hundred thousand dollars that was originally intended for the natural stream channel design construction costs within the watershed. If Mr. Capitano does not want us to access his property, the linear feet of stream channel restoration will have to occur above his property from below the Ide's property to just below Manor Care, leaving the lower reach of Hicks Creek still with a severe stream impairment caused by sedimentation, incising of the stream channel, and severe bank erosion leading into the lower basin. We have to act very soon on this effort

- On 1-6-2013, Karen was able to forward my correspondence to all member of the Exeter Borough Council to see if any progress had been made with Mr. Capitano and to inform them of the possibility of losing valuable construction dollars from both grants
- On 1-7-2013, EPCAMR asked Karen if she had any personal contact information for Mr. Capitano; Exeter Borough Council is working through Mr. Capitano's Attorney and responses and communications have been few and far between; If EPCAMR could get a Yes or No answer out of him on whether or not we can include his parcel of property in the project, we could proceed more quickly; If not, our project will just reduce the size of the linear feet of stream channel that we could work on; In order for EPCAMR to finish our design, we need his cooperation to let us know if we can include his property in the bid for construction work down the road here before Spring, and if not, we will reduce the size of the scope for the construction, put out the bid, and hope to restore the upper section of the Hick Creeks stream channel with the cooperation of the Borough.



- Karen was able to research his name on the Luzerne County property assessment database listed on the Times Leader website and found a Carmen Capitano 200 Breezeway Dr., Jenkins Twp., PA 18640 is owner of 750 Slocum St., Exeter Boro. Plate # 16-4-771-2, Pin# E10S1-001-035-000. She also looked up the address of the nearby Four Season's Golf Course (across the street) and it was also 750 Slocum St. She wonders if they used the same address since the land is not developed and doesn't have a postal address yet; EPCAMR is hesitant to send any correspondence to an unknown address that it can't confirm
- On 1-8-2013, EPCAMR received correspondence once again from Harold Ash, Exeter Borough's Engineer, that he has not been in contact with Mr. Capitano in regards to our project, as he has not been authorized to do so. However, he would be available to meet and discuss the project with him in order to move this forward, if authorized by Exeter Borough. It is his understanding that the Borough has not been successful in scheduling a meeting with Mr. Capitano on this matter due to circumstances relative to the original land acquisition for the DEP Flood Protection Project on this portion of Hick's Creek, which are not clearly known to the Borough's Engineer nor EPCAMR; It appears to be a monetary issue; They have attached an aerial site plan and cross sections of the basin area, which show the eroded bank areas, property lines and easements, both temporary and permanent, at the site. The temporary easement was for the original DEP Project, and is no longer applicable, but is provided for reference purposes ([TOPO-LIDAR-2-9-12 and CROSS-SECTIONS.pdf](#)). Obviously, we need to work on Mr. Capitano's property to address both the Exeter Borough Slocum Basin Project and the EPCAMR Natural Stream Channel Design Project
- On 1-8-2013, EPCAMR Executive Director sought the advice of our Project Officer, Dennis Palladino, on how to proceed next; EPCAMR has hit a brick wall it seems and EPCAMR is trying to find a way to move the project forward without Mr. Capitano's cooperation since we have no way of contacting him personally; He is working with Exeter Borough only through their solicitor and his Attorney and that communication is sporadic at best; Exeter Borough is having trouble reaching him to come to an agreement on the restoration and streambank protection of the Flood Debris basin that is at the tail end of our project, that is also on Mr. Capitano's property.
- EPCAMR doesn't know if we should try one last attempt through his Attorney, which we would have to find out who that person is; Or, if we should talk to Skelly & Loy about reducing the linear feet of the natural stream channel restoration work to the section of the Hicks Creek from the Ide's property (where the bridge crossing is located upstream where rip rap has been placed in the channel just below the concrete culvert that serves as an entrance bridge to the Ide's property down to below the Manor Care facility before entering on to Mr. Capitano's property; If we can reduce the Scope of the construction design, it will reduce our linear feet of restoration, but it might require a minor revision to the design to allow for the step pools to ease into Mr. Capitano's property within the creek further downstream

If EPCAMR is going to do this, we want to know if you think there is any other alternatives that we should try before consulting our engineers to consider making those changes to the design to finalize them so we can get them to the Conservation District for administrative review and approval and then move forward with the remaining issues with the project before putting it out to bid for construction. We are just under 6 months left to complete the project and EPCAMR would really be at a loss for words if we couldn't get this design FINAL and at least start construction of the project that in the end, would need another phase of construction in the future, with the landowner consent from Mr. Capitano at a later time, if he was in agreement with such a project.

EPCAMR doesn't believe that Exeter Borough is going to proceed with any type of eminent domain proceedings on the property, however, it can't be ruled out, but given the time constraints on the project, and lack of funding possibly by the Borough to pursue such a proceeding, we have a feeling that both the Hicks Creek Slocum Street Debris Basin Growing Greener Project that Exeter Borough has that is being coordinated by Karen Szwest, and our complete execution of the full length of our original design will be jeopardized before the end of June 2013.

This is a critical time for the project to move forward and EPCAMR wants to leave enough time to make the appropriate decisions so that the project can move forward. EPCAMR is also concerned that all of the design and engineering that has been put forth by Skelly & Loy and EPCAMR's time is not going to be enough to complete this project as it was proposed in its original scope; EPCAMR is confident that we can complete the upper section of the Hicks Creek, complete with Final design, engineering, and construction; EPCAMR is less confident that we are going to make any headway with Mr. Capitano, due to his quagmire with Exeter Borough that pre-dates our project that we were not fully made aware of by anyone prior to the submission of the original grant

EPCAMR wanted to know if we have any specific obligations in the contract agreement to do something under statute as opposed to just modifying the Scope and Design because we ended up having an unwilling landowner who we've not been able to contact and has other legal issues with the Exeter Borough. We are sure that PA DEP BAMR has run into these situations with landowners on reclamation projects in the past and could use their insight and perspective

- Dennis responded and his gut feeling was that EPCAMR needed to proceed with the project without Mr. Capitano's property included; This is what BAMR tends to do if they have an uncooperative property owner. He is very doubtful that we could get another extension, unless the project is under construction, though he isn't quite sure; He suggested that we get the design altered and get it to the Conservation District as soon as possible; Since the US ACE didn't review the revised Chapter 105 permit, they will need to see the re-design and he could help expedite that process
- On 1-9-2013, Dennis also responded that Exeter Borough may use some kind of police power to do the work on Mr. Capitano's property if the Borough feels that there is a potential flooding problem, erosion of the streambanks etc. if the project is not built in that area; He didn't know the legality of the suggestion, but that is exactly what the eminent domain option is that is available to them should they choose to use it; EPCAMR has no influence over that authority at a municipal level and therefore has chosen to stay out of the legal issues at this time
- On 1-30-2013. EPCAMR Executive Director responded to Exeter Borough Council via e-mail and to our Engineer and other partners, that we have not been able to get in contact with Mr. Capitano either for a very long time. We have personally pursued many avenues and attempts to reach him, to no avail; EPCAMR has been advised by our Project Advisor, Dennis Palladino, from the Commonwealth of PA's Wilkes-Barre Bureau of Abandoned Mine Reclamation, to move the project forward without his participation, utilization and or access to any of his property, and inclusion in the scope of work for the natural stream channel restoration project.

EPCAMR doesn't believe that Exeter Borough has taken any stance on the authority it has or doesn't have on the property area in question for the project owned by Mr. Capitano and EPCAMR does not have any legal authority to act otherwise. The grant funds that we have from the Commonwealth of PA do not cover legal expenses, nor did we budget funds for that purpose. EPCAMR doesn't have the funds to pursue this project legally, nor do we feel that we should have to with Mr. Capitano. We are trying to act in the best interest of the Borough and the community at large.

EPCAMR informed all the parties that we would wait until January 31st, 2013 to see if we can make any headway with all of our partners here and to see if we can reach Mr. Capitano for an amicable solution; Otherwise, as the Project Manager and Executive Director of EPCAMR on this project, EPCAMR will have to move forward with the project and have our Engineer, Skelly & Loy, proceed with making design and engineering modifications to the existing plan to end the project just upstream of Mr. Capitano's property behind the Manor Care area, to allow for a gradual ease of construction into Mr. Capitano's property along the centerline of Hicks Creek; The final design needs to be completed very soon, so that EPCAMR and Skelly & Loy can submit the plan to the Luzerne Conservation District for Erosion & Sedimentation Control Administrative completeness and review, as well as schedule a meeting with the PA DEP Chapter 105 Waterways Bureau and possibly the US Army Corps of Engineers to proceed. Our next step would then be to prepare and put the revised project out to bid for construction sometime in the Spring of 2013, open the bids, select the contractor, and proceed to construction before the June 30, 2013 grant deadline

- On 1-30-2013, Exeter Borough decided they were going to approve the Borough hiring the services of a licensed real estate appraiser to provide an opinion of value for Capitano's property right near the Hicks Creek right of way near Slocum and Schooley Avenues; It will give the Council the best opportunity to decide how to proceed further; Depending on the value appraised, Council can seek to use its eminent domain power to take an easement right from Capitano to complete the Hicks Creek projects and not lose the majority of the funding from the grants; However, again, it will need to find and secure funds to pay for the easement right; Clearly there is a public interest at stake in shoring up the creek and preventing erosion which can cause flooding.
- On 2-11-2013, EPCAMR followed up with Karen Szwasz, who has been providing us with the most comprehensive knowledge of the situation going on with Exeter Borough, since we have not heard back from any Council members individually for months via e-mail correspondence; EPCAMR also copied the entire Exeter Borough Council, their Solicitor, Attorney Ray Hassey, their Engineer, and our Engineer on the status of the project currently; Judging by the actions that have to be taken by Exeter Borough over the course of the next several months, it does have a tremendous impact on the state of the project as it stands; There are a lot of unknowns at this point and a delay for another two months would severely hamper our efforts to get the E & S Plan and other Project Management Items completed on time so that we can have a bid package to go forward with Construction what now will have to be much shorter stream segment length of the Creek, once Skelly & Loy revises the Construction Plan to not affect Capitano's property
- Depending on the appraised value of the land is part of the equation, funding the conservation easement or outright purchase of the property through eminent domain and fee simple ownership is two different scenarios that EPCAMR is sure Council will have to make a decision on based on their Borough's budget constraints; Even when the appraisal is complete and the value is determined, the Borough has the option to not pursue the taking or not and if that happens and we haven't moved forward by then, we will lose even a greater amount of funds.

- Not knowing the time frame on those actions to be taken, as the Grant Administrator for the PA DEP Growing Greener Grant that EPCAMR is administering that will expire by June 30, 2013, EPCAMR has to make the decision to move forward at this point with shortening up the project and moving forward without the Capitano property involved. We don't want to, but we're afraid we have to. We were advised by our Project Advisor that if we can't get cooperation from the landowner, that we should move on, just as they do with their reclamation projects.
- EPCAMR is going to be following up with our Engineering Firm, Skelly & Loy to talk with them about how we are going to proceed from here to tighten up the stream area affected in the Final Design to make the necessary revisions before we finally submit it to the Conservation District for Administrative Review and completeness so that we can proceed.
- On 2-12-2013 EPCAMR Executive Director prepared the Progress Report and Project Reimbursement and submitted it to our Project Officer, Dennis Palladino

Respectfully Submitted,

*Robert E. Hughes*

Robert E. Hughes  
EPCAMR Executive Director