

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Proposed Field-wide Spacing and
Integration Rules for the

COUNTY LINE FIELD,

Pursuant to Article 23 of the Environmental
Conservation Law and Parts 550 through 559 of
Title 6 of the Official Compilation of Codes,
Rules and Regulations of the State of New
York.

DEC Project No. DMN-02-05

DECISION OF THE ASSISTANT COMMISSIONER

August 24, 2005

DECISION OF THE ASSISTANT COMMISSIONER¹

Staff of the Department of Environmental Conservation ("Department") commenced proceedings pursuant to part 624 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") proposing issuance of an order that would establish field-wide spacing and integration rules for the County Line natural gas field located in Steuben, Chemung, and Schuyler Counties (the "Field"). Fortuna Energy Inc. ("Fortuna"), Department staff, intervenor Western Land Services, Inc. ("WLS"), and party-status petitioner Buck Mountain Associates ("Buck Mountain") appealed from a February 20, 2004 Ruling on Issues and Party Status ("Issues Ruling") issued by Administrative Law Judge ("ALJ") Susan J. DuBois.

In an interim decision dated May 24, 2005, I modified the ALJ's ruling by holding that WLS raised an adjudicable issue concerning the western boundary of the western spacing unit -- a proposed unit known as the Youmans unit -- and remanded the matter to the ALJ to conduct a hearing on the issue (see Matter of County Line Field, Interim Decision of the Assistant Commissioner, May 24, 2005, at 13-17, 20). With respect to the

¹ Acting Commissioner Denise M. Sheehan delegated decision making authority in this proceeding to Assistant Commissioner Henry L. Hamilton by memorandum dated February 18, 2005.

remaining issues raised by WLS on its appeal, which concerned the terms and conditions of its integration into the Field, I reserved decision until it was determined whether WLS's interests would be included in the Field (see id. at 18-20). WLS presently holds an oil and gas lease for a parcel of land known as the Stephens tract located outside of and to the west of the proposed western boundary of the Youmans unit (see id. at 3).²

Upon remand, ALJ DuBois was informed by Department staff and Fortuna that the well on the proposed Youmans unit had been plugged and abandoned and, consequently, the request to establish the Youmans unit was withdrawn. Accordingly, ALJ DuBois cancelled the adjudicatory hearing and forwarded a summary hearing report dated August 2, 2005, to the Assistant Commissioner (attached). In that report, the ALJ concludes that because WLS has no interest in the Field following withdrawal of the Youmans unit, no decision is necessary on the remaining issues raised by WLS on its appeal (see id. at 4). Accordingly,

² The May 24, 2005 interim decision resolved all issues raised by Fortuna, Department staff, and Buck Mountain on their respective appeals. Accordingly, I directed Department staff to prepare for my signature an interim order establishing the boundaries of the remaining spacing units within the Field, and integrating the interests within those units pursuant to ECL 23-0701 and 23-0901.

The decision also resolved several threshold issues raised by WLS. Thus, the only issues remaining on the appeal are those raised by WLS concerning the integration of its interests into the Field.

ALJ DuBois recommends that the remainder of WLS's appeal be deemed moot.

I agree with and accept the ALJ's recommendation contained in her summary hearing report. The remaining issues raised by WLS concerning the terms by which its interests would be integrated into the Field all depended upon the inclusion of the Stephens tract in the Youmans unit. With the withdrawal of the request to establish the Youmans unit, the issues raised concerning WLS's integration have been rendered academic.

With respect to WLS's challenge to the trade secret status afforded lease status information in the Field, WLS's arguments are rejected not only as moot, but for the additional reasons stated by the ALJ (see Issues Ruling, at 20-21). Although WLS sought access to the information through a Freedom of Information Law ("FOIL") request (see 6 NYCRR part 616), WLS failed to pursue an administrative FOIL appeal after receiving a denial of its request by Department staff. By abandoning the orderly administrative procedures for challenging Department staff's trade secret determination, WLS is now foreclosed from raising the issue (see Matter of Terry Hill South Field, First Interim Decision of the Commissioner, Dec. 21, 2004, at 14).

In conclusion, none of the remaining issues reserved upon in the interim decision are adjudicable, and the ALJ's remaining issues rulings in this regard are affirmed.

Accordingly, the matter is remanded to Department staff to complete the order, as directed in the interim decision, establishing field-wide spacing and integration rules for the County Line Field.

For the New York State Department
of Environmental Conservation

By: _____/s/_____

Henry L. Hamilton
Assistant Commissioner

Dated: August 24, 2005
Albany, New York

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION
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Pursuant to Article 23 of the Environmental
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DEC Project No. DMN-02-05

SUMMARY HEARING REPORT

by

/s/

Susan J. DuBois
Administrative Law Judge

August 2, 2005

SUMMARY HEARING REPORT

By notice dated February 20, 2003, the New York State Department of Environmental Conservation (DEC or Department) scheduled a hearing on the proposed establishment of field-wide spacing and integration rules for a natural gas field known as the County Line Field. The acreage designated as the County Line Field is located in the Town of Catlin, Chemung County, the Towns of Dix and Montour, Schuyler County, and the Town of Hornby, Steuben County.

Pursuant to part 553 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR part 553), DEC Staff proposed that the Commissioner of Environmental Conservation issue an order establishing spacing and integration rules for the field. DEC is responsible for establishing spacing units for oil and natural gas pools and fields, pursuant to Environmental Conservation Law (ECL) section 23-0501, in order to carry out the policy provisions of ECL 23-0301. The latter section states that, "It is hereby declared to be in the public interest to regulate the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected...."

Development of the County Line Field began in 2000. The original developers of the field conveyed their interests to Fortuna Energy, Inc. (Fortuna), 1519 Olean-Portville Road, Olean, New York 14760. Fortuna continued to complete and produce wells in the field.

The proposed County Line Field appears on a map as a long, narrow, and slightly curved strip of land extending approximately west-southwest to east-northeast. At the time the hearing began, five production units were proposed in the field. The five proposed units, going from west to east along the field, were the Youmans, Roy, Whiteman, Peterson and Purvis units.

In order to ensure that all affected interest owners receive fair and equitable compensation upon issuance of a final spacing order, DEC Staff required the field's developers to escrow royalties generated as a result of the gas production. Some production units contain a small number of unleased parcels where the right to develop the oil and/or natural gas has not been conveyed to Fortuna.

DEC Staff determined that compulsory integration is necessary to incorporate the unleased parcels into the proposed spacing units for the purpose of distributing escrowed and future royalties. DEC Staff requested that a hearing be scheduled concerning the proposed establishment of field-wide spacing and integration rules for the field.

The hearing began on March 25, 2003 in Painted Post, New York before Susan J. DuBois, Administrative Law Judge. The hearing is being held pursuant to the procedures in 6 NYCRR part 624 (Permit Hearing Procedures). The background and proceedings are more fully described in the February 20, 2004 ruling that identified the issues to be adjudicated and the parties that would participate in the adjudicatory hearing.

The February 20, 2004 ruling granted party status to a consolidated party consisting of Western Land Services, Inc., Alan T. Stephens and Darcie J. Stephens (WLS), in addition to DEC Staff and Fortuna that are parties pursuant to part 624. The ruling identified one issue for adjudication concerning the western boundary of the Youmans unit. Western Land Services leases the oil and gas rights on two parcels of land owned by the Stephens that were just west of the western boundary of the proposed Youmans unit, and the outcome of this issue could affect whether these parcels were in the unit. As identified in the issues ruling, this issue included whether the unit's western boundary should be moved farther west or, in the alternative, whether an extension unit should be created to the west of the Youmans unit. The ruling found that other issues proposed by WLS, about the terms of integration of interests and the procedures for the hearing, did not require adjudication.

Appeals of the February 20, 2004 ruling were submitted to the Commissioner by the parties and by one entity that was denied party status. On February 18, 2005, Acting Commissioner Denise M. Sheehan delegated decision making authority in this proceeding to Assistant Commissioner Henry L. Hamilton. On May 24, 2005, Assistant Commissioner Hamilton issued an interim decision concerning the appeals.

The interim decision modified the issue concerning the boundary of the Youmans unit, by stating that WLS failed to raise an adjudicable issue about an extension unit and had only raised an issue about the location of the boundary. The interim decision remanded the modified issue to me to conduct an adjudicatory hearing on the modified issue.

The interim decision reserved decision on the portions of WLS's appeal that dealt with whether to adjudicate the terms and conditions of WLS's integration into the field. The interim decision stated that these portions of the appeal were not yet ripe for review because they depend upon a determination that lands for which WLS holds mineral leases should be included in the field. The interim decision also directed DEC Staff to prepare for Assistant Commissioner Hamilton's signature an interim order establishing the boundaries of the Roy, Whiteman, Peterson and Purvis units and integrating the interests within those units pursuant to ECL 23-0701 and 23-0901.

On June 2, 2005, I contacted the representatives of the parties by telephone about scheduling a date for the hearing. On June 14, 2005, John H. Heyer, Esq., on behalf of Fortuna, sent me a copy of Fortuna's plugging report pertaining to the Youmans well. The well was plugged in late May and early June, 2005. Mr. Heyer's letter stated that Fortuna has abandoned this well and the Trenton Black River formation within the Youmans unit. Fortuna requested that its application for the Youmans spacing unit be withdrawn and that the unit be thereby extinguished.

On June 28, 2005, I notified the parties that, if the Youmans unit is no longer proposed as part of the County Line Field, the issue concerning its western boundary no longer needs to be adjudicated. I asked that DEC Staff notify me whether it was withdrawing the portion of its proposal that would have established the Youmans unit. On July 6, 2005, Arlene J. Lotters, Esq., on behalf of DEC Staff, sent me a letter confirming that the Youmans well has been plugged and abandoned and stating that the Youmans unit is no longer proposed as part of the County Line Field. DEC Staff concurred with the request in Mr. Heyer's letter.

WLS wrote to me on July 11, 2005, stating that to the extent the Youmans well produced marketable quantities of gas, there may be royalty interests and determining whether royalties were correctly paid could not occur until the appropriate unit configuration and the production history of the well are known. DEC Staff responded on July 13, 2005, stating that production at the Youmans well failed to commence, and that it would be a waste of time to adjudicate the unit boundary when the royalty calculation would consist of dividing zero dollars. DEC Staff provided copies of the annual production reports for 2002 through 2004 for the Youmans well, that state there was no production in any of these years. No further comment, or request for opportunity to comment, was submitted by Fortuna or WLS in response to DEC Staff's July 13, 2005 letter.

Because the proposal to establish the Youmans unit was withdrawn and there was no production from the well, the remanded issue need not be adjudicated. Accordingly, I am referring this matter to Assistant Commissioner Hamilton. I recommend that WLS's remaining appeals from the issues ruling, on which decision was reserved by the Assistant Commissioner, be found to be moot. Because WLS does not have interests in the County Line Field as it will exist following withdrawal of the Youmans unit, no decision is necessary on WLS's proposed issues concerning how its interests should be integrated.