

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Integration of
Interests within an Individual Spacing
Unit Pursuant to Environmental
Conservation Law ("ECL") § 23-0901(3)
Known as,

**COMMISSIONER RULING
ON MOTION FOR AN
EXPEDITED APPEAL**

DEC Case No.
DMN 06-09

DRUMM 1.

By notice of motion dated October 6, 2006, Fortuna Energy, Inc. ("Fortuna") moved for an expedited appeal from the September 26, 2006 ruling of Chief Administrative Law Judge James T. McClymonds in the above-referenced matter. As set forth in its notice of motion, Fortuna asserted that the appeal was being brought as of right pursuant to 6 NYCRR 624.8(d)(1) and, in the alternative, as a motion for leave pursuant to 6 NYCRR 624.8(d)(2).

In the September 26, 2006 ruling the Chief Administrative Law Judge determined that the Laws of 2005, Chapter 386, effective August 2, 2005, amending ECL 23-0901(3), apply to the integration of interests in the Drumm 1 spacing unit and that, absent a referral from staff of the Department of Environmental Conservation ("Department"), no proceedings for review of an integration order were available under 6 NYCRR part 624.

By letter dated October 10, 2006, Assistant Commissioner for Hearings and Mediation Services Louis A. Alexander advised all parties that their time to answer the motion was extended to October 20, 2006. The parties were further directed in their responses to address the threshold questions whether the appeal should be considered as a matter of right or on motion for leave, and if on a motion, whether the standards for granting a motion for leave had been satisfied. Timely responses were received from all parties.

The September 26, 2006 ruling of the Chief Administrative Law Judge was also the subject of a contemporaneous review in Supreme Court, Albany County, in a proceeding brought pursuant to CPLR article 78, by Western Land Services, Inc. By decision and order of Supreme Court, dated

December 29, 2006, the matter was remanded to the Department for further administrative adjudication. In view of this decision, by letter dated February 22, 2007, Department staff requested that the Office of Hearings and Mediation Services initiate an adjudicatory proceeding to review the issues raised by Western Land Services, Inc.

From the foregoing, and in accordance with DEC Program Policy DMN-1, I conclude that Department staff has effectively referred this matter to the Office of Hearings and Mediation Services inasmuch as "(1) a substantive and significant issue exists which requires adjudication, or (2) revisions to the draft order are required before it can be accurately finalized" (id. at 3).

Accordingly, Fortuna's appeal as of right pursuant to 6 NYCRR 624.8(d)(1) is dismissed as academic. Moreover, its motion for leave to appeal pursuant to 6 NYCRR 624.8(d)(2) is denied as moot.

The matter is remanded to Chief Administrative Law Judge McClymonds for further proceedings. Issues sought to be raised by Fortuna, including whether the establishment of the spacing unit for the Drumm 1 well, and the compulsory integration of interests therein, are governed by ECL article 23, as amended by the Laws of 2005, Chapter 386, may be reviewed in due course in those further proceedings.

For the New York State Department of
Environmental Conservation

/s/

By: _____
Alexander B. Grannis,
Commissioner

Dated: November 30, 2007
Albany, New York

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