

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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

J. DRUMM 1.

**RULING OF THE
ADMINISTRATIVE LAW
JUDGE ON ISSUES AND
PARTY STATUS**

DEC Order No.
DMN 07-23

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

WINKKY 1.

DEC Order No.
DMN 07-18

Appearances of Counsel:

- Alison H. Crocker, Deputy Commissioner and General Counsel (Jennifer Hairie of counsel), for staff of the Department of Environmental Conservation
- The West Law Firm, PLLC (Thomas S. West of counsel), for Fortuna Energy Inc.
- The Denton Law Office PPLC (Christopher Denton of counsel), for non-participating owners Zig's Dream, LLC (J. Drumm 1), and Church Hill Gas Development, LLC and JT Oughterson Development, LLC (Winkky 1) (no appearance at issues conference)

**RULING OF THE ADMINISTRATIVE LAW JUDGE
ON ISSUES AND PARTY STATUS**

Background

Staff of the Department of Environmental Conservation's Division of Mineral Resources ("Department") propose to issue compulsory integration orders pursuant to Environmental Conservation Law ("ECL") § 23-0901, integrating mineral interests

within the spacing units for the J. Drumm 1 natural gas well (API No. 31-101-23985-00-00), located in the Town of Thurston, Steuben County; and the Winkky 1 well (API No. 31-015-23950-00-00), located in the Town of Veteran, Chemung County. The wells will tap into the Trenton-Black River natural gas formation.

Separate compulsory integration hearings, conducted by Department staff pursuant to ECL 23-0901(3)(b), were held on each of the two wells. At the integration hearings, well operator Fortuna Energy Inc. objected to Department staff's condition in the draft integration orders requiring Fortuna to provide well data and well site access to integrated participating owners (see ECL 23-0901[3][a][2] ["IPOs"]) and integrated non-participating owners (see ECL 23-0901[3][a][1] ["NPOs"]) without the imposition of terms of confidentiality.

Pursuant to ECL 23-0901(3)(d), based upon the objections raised at the integration hearings, Department staff referred the matters to the Department's Office of Hearings and Mediation Services ("OHMS") for administrative adjudicatory hearings pursuant to 6 NYCRR part 624 ("Part 624"). The matters were assigned to Chief Administrative Law Judge ("ALJ") James T. McClymonds as presiding ALJ. Because common issues were presented, these two proceedings were joined with proceedings on four additional wells (Drumm 1, SRA3 1, Usack 1, and Winter 1-A) for hearings on a joint record.

A joint notice of public legislative hearing and issues conference dated April 4, 2008 for the six proceedings was published in the Department's Environmental Notice Bulletin on April 9, 2008 (see Issues Conference Exhibit ["IC Exh"] 1A). The notice was also published in the Watkins Glen Review and Express on April 9, 2008 (see IC Exh 1C). On April 11, 2008, the notice was also published in the Corning Leader, the Elmira Star-Gazette, and the Sayre Morning Times (see IC Exhs 1D, 1E, and 1F).

A legislative hearing and issues conference was scheduled for May 13, 2008 in Montour Falls, New York. A timely notice of appearance to participate in the issues conference on the J. Drumm 1 and Winkky 1 wells (see Matter of Dzybon 1, ALJ Ruling on Procedural Issues, June 6, 2007, appeals pending with the Commissioner) was filed by Fortuna.

State Environmental Quality Review Act ("SEORA") Status

As stated in the notice, Department staff published a Final Generic Environmental Impact Statement on the Oil, Gas and

Solution Mining Regulatory Program in July 1992 ("GEIS"). On September 1, 1992, Department staff issued a SEQRA (ECL article 8) findings statement concluding that the conduct of compulsory integration hearings pursuant to ECL article 23 would have no significant impact on the environment. Department staff, on behalf of the Department as lead agency, determined that these proceedings are being carried out in conformance with the conditions and thresholds established for compulsory integration hearings in the GEIS and the findings statement. Accordingly, no further action is required under SEQRA (see 6 NYCRR 617.10[d][1]).

Legislative Hearing

The joint legislative hearing convened as scheduled at 1:00 P.M. on May 13, 2008. About 6 people attended the legislative hearing, and two people made oral statements.

Ms. Jane Wilson identified herself as an uncontrolled owner in the J. Drumm 1 unit. Ms. Wilson was told that as a non-objecting owner, her mineral interests would be finalized at the integration hearing. Ms. Wilson stated, however, that she never received notice that her interests were not finalized at the integration hearing and she questioned why they remained unfinalized at this time.

Mr. Robert Desanto spoke on behalf of the New York Natural Resource Owners Association, Inc. Mr. Desanto challenged the well operators' practice of drilling wells prior to the completion of the compulsory integration process. Mr. Desanto provided for the record a written copy of his oral statement and a copy of ECL 23-0501(2)(b).

The legislative hearing concluded at 1:13 P.M., with the conclusion of the public statements.

Issues Conference

The joint issues conference convened at 1:21 P.M. on May 13, 2008, after the conclusion of the legislative hearing. Department staff was represented by Jennifer Hairie, Esq., Kathleen Sanford, Jack Dahl and Thomas Noll. Fortuna was represented by Thomas S. West, Esq., of the West Law Firm, PLLC. Christopher Denton did not file notices of appearance or appear at the issues conference on behalf of the non-participating owners represented by him.

At the conclusion of the issues conference, Fortuna

stipulated to pay all amounts of money not in dispute to any owners who have participated through the compulsory integration process (see Issues Conference Transcript ["IC Trans"], at 208-209). No objections were raised to Fortuna's stipulation. Thereafter, the issues conference concluded at 5:40 P.M.

Discussion

The only issue raised at the issues conference concerning the J. Drumm 1 and Winkky 1 wells was the well data and well site access issue. Fortuna noted that this issue is presently before and fully briefed to the Commissioner on appeal from the ALJ ruling in Matter of Beach W 1, et al. (Ruling of the ALJ on Issues and Party Status, March 14, 2008 ["Issues Ruling"]). Fortuna indicated its willingness to stipulate with the other parties to have these proceedings joined with the appeals in Beach and to abide by the outcome of the Beach proceeding.

With respect to J. Drumm 1 and Winkky 1, Department staff agreed with Fortuna that no further briefing was required and that these two proceedings could be joined with the appeals in Beach. Department staff did note, however, that the ECL 23-0313 confidentiality period for well data for Freedom of Information Law purposes has expired for the Winkky 1 well (see IC Trans, at 12). Nevertheless, staff urges application of the mootness exception for the Winkky 1 well data. Staff also noted that for the J. Drumm 1 well, the ECL 23-0313 confidentiality period will expire May 9, 2009.

Ruling

I adhere to my ruling in Beach that the well data and well site access issue is an adjudicable issue (see Issues Ruling, at 22-25). I also adhere to my determination that further record development is required before decision on the issue (see id.) and that the mootness exception is applicable to those wells where the ECL 23-0313 period has expired (see id. at 24 n 11). Full parties to these two proceedings are Department staff and Fortuna (see id. at 6-7).

The parties to the issues conference are entitled to appeal this issue ruling as of right to the Commissioner (see id. at 31-32; 6 NYCRR 624.8[d][2]). Fortuna and Department staff have stipulated to waive any further briefing of the well data and well site access issue prior to joining these proceedings with the appeals in Beach.

Accordingly, the proceedings on J. Drumm 1 and Winky 1 are hereby severed from the remaining four proceedings, and are forwarded to the Commissioner's office to be joined with the proceedings on appeal in Beach.

_____/s/_____
James T. McClymonds
Chief Administrative Law Judge

Dated: June 11, 2008
Albany, New York

Attachments

TO: Louis A. Alexander, Asst. Commissioner
Attached Active Parties List (via email and regular mail)
Attached Service Lists (via regular mail)