

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

In the Matter of the Petition Pursuant to Section 15-1983 of the Environmental Conservation Law (ECL) for an Easement on Lands Belonging to Others for Drainage of Agricultural Lands

**ORDER OF
DISPOSITION**

DEC Proceeding No.
OHMS 67612

April 29, 2014

- by -

**FREDDY STRANO, JOE STANCAMPIANO,
and JOHN DUNSMOOR,**

Petitioners.

Petitioners Freddy Strano, Joe Stancampiano, and John Dunsmoor filed a petition dated August 24, 2012, with the Department of Environmental Conservation (Department) pursuant to Environmental Conservation Law (ECL) § 15-1983. Petitioners seek an easement over the lands of others for purposes of constructing, reconstructing, enlarging, cleaning or maintaining a drainage ditch to drain their agricultural lands located in the Town of New Haven, Oswego County. Petitioners have reached a settlement with some of the responding parties, and have otherwise withdrawn their petition. Accordingly, the petition is dismissed without prejudice.

I. Background

ECL 15-1983 authorizes persons owning any swamp, bog, pond, meadow, or other low or wet agricultural lands to acquire an easement over the lands of others to construct, reconstruct, enlarge, clean, or maintain drainage ditches in order to increase the productivity of their lands or otherwise render them suitable for agricultural purposes. Persons owning such lands are commonly referred to as "muck farmers."

Section 15-1983 has its genesis in legislative efforts around the turn of the last century to provide muck farmers with a means of draining wet agricultural lands to make them more productive. Legislation adopted in 1895 authorized owners of agricultural lands to commence proceedings to drain their lands

by the construction and maintenance of drains or dykes on the lands of other persons. In 1900, the New York Court of Appeals held that the 1895 law was unconstitutional because it allowed the use of the power of eminent domain for a purely private purpose (see Matter of Tuthill, 163 NY 133, 147 [1900]). In response to that decision, article I, section 7 of the New York Constitution was amended in 1919 to expressly declare that the use of property for the drainage of swamps or agricultural lands is a public use (see NY Const, art I, § 7[d]; see also 6 New York State Constitutional Convention Committee, Problems Relating to Bill of Rights and General Welfare 143-145 [1938]).

In anticipation of passage of the 1919 constitutional amendment, article 8-A of the former Conservation Law was enacted in 1918 (see L 1918, ch 445, § 1). Article 8-A, entitled "Drainage of Agricultural Lands," was enacted to enable owners of agricultural lands to initiate proceedings to procure an easement or right of way for the purpose of providing drainage across the lands of adjacent owners by petitioning the former Conservation Commission (see Eighth Annual Report of the Conservation Commission 1918, at 151 [1919]). Article 8-A, as amended, is now codified at ECL 15-1983.

A petition pursuant to ECL 15-1983 essentially invokes the Department's power of eminent domain (see ECL 3-0301[2][1]; ECL 15-0311). Upon a petition by an owner of agricultural lands for an easement or right of way over the lands of others for drainage purposes,¹ the Department acts as a condemnor and, using procedures consistent with the Eminent Domain Procedure Law (EDPL), makes a determination whether the occupation of lands and properties of others is necessary for the drainage of petitioner's land (see ECL 15-1983[6][b]). If so, the Department assesses the amount of compensation due from the petitioner to the affected landowners, and files its determination in the clerk's office of the county or counties in which the affected lands and properties are located (see ECL 15-1983[6][b] and [c], [8]). The Department's determinations are made after notice to all affected property owners and a hearing (see ECL 15-1983[5], [6][a]).

¹ Entities with the power of eminent domain, such as drainage improvement districts formed pursuant to ECL article 15, title 19 (see ECL 15-1905[1]), may, in the alternative, commence EDPL proceedings to acquire an ECL 15-1983 easement or right of way (see ECL 15-1983[1]). Persons, such as petitioners here, who lack eminent domain power, must petition the Department for an easement or right of way.

II. Proceedings

Petitioners Freddy Strano, Joe Stancampiano, and John Dunsmoor filed their petition dated August 24, 2012, seeking easements over the lands of others to maintain and clear a naturally occurring drainage ditch that leads from their agricultural lands through a culvert pipe located under State Route 104 in the Town of New Haven, Oswego County, together with a 50-foot wide working right of way from the center of ditch. Non-farm owners proposed to be affected by the easements include Timothy and Kristin Hawkins, Joseph Hryb and Cheryl Hawkins, Timothy Bunce, Robert and Suzanne Borden, III, and Matthew Peterson (collectively "non-farm owners").

The drainage ditch that is the subject of the petition is a stream referred to by the representative of Timothy and Kristin Hawkins as Red Creek. Review of Departmental records indicates that the stream is a class C stream identified in the Department's regulations as Ont. 61a (see 6 NYCRR 847.5, Table I, Item No. 456).

A notice dated September 14, 2012, was sent to all non-farm owners notifying them about the petition, and scheduling a conference call for purposes of scheduling a hearing and site visit on the petition.

The telephone conference call was conducted as noticed on October 2, 2012. Participating in the conference call were Margaret Sheen, Esq., for Department staff; petitioners Freddy Strano, Joe Stancampiano, and John Dunsmoor (collectively, petitioners); and John DeHollander, Oswego County Soil and Water Conservation District, on behalf of petitioners. Also participating were responding non-farm owners Joseph Hryb, on his own behalf and on behalf of Cheryl Hawkins; Robert Borden II, on his own behalf and on behalf of Suzanne Borden; and Matthew Peterson. Kimberly Steele, Esq., of the Steele Law Firm, appeared on behalf of responding non-farm owners Timothy and Kristin Hawkins. Responding non-farm owner Timothy Bunce did not participate in the telephone conference call.

Also attending the conference call as observers were Liz Dribusch, Nancy Weber, and Jeff Williams from the New York Farm Bureau; and Jonathan Schell from the Oswego County Cooperative Extension.

I informed the parties that in addition to ECL 15-1983, the procedures under the New York Eminent Domain Procedure Law (EDPL) would apply to the proceedings on the petition (see EDPL 104). Because the Department's permit hearing procedures found in part 624 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 624) appear to satisfy the notice and hearing requirements of ECL 15-1983 and the EDPL, I notified the parties that the Part 624 procedural regulations would be followed (see EDPL 206[C]).

As a preliminary matter to the scheduling of a hearing, I asked whether petitioners had sought to negotiate an agreement with all responding non-farm owners that would avoid the necessity of a hearing (see ECL 15-1983[1][e]). Although negotiation had been attempted with Timothy and Kristin Hawkins, the other responding non-farm owners had not been contacted yet. In addition, Ms. Steele indicated that Timothy and Kristin Hawkins would be interested in further discussions. Accordingly, it was agreed that petitioners would attempt to negotiate a resolution of this matter with the responding non-farm land owners.

In addition, to assist the parties in their negotiations, I assigned Administrative Law Judge Richard R. Wissler as the settlement judge and mediator for this matter. Judge Wissler conducted a site visit in February 2013 and a mediation session in March 2013.

On April 24, 2014, Judge Wissler forwarded to me a letter of the same date from petitioners. In that letter, petitioners indicate that petitioners Stancampiano and Dunsmoor have reached a tentative agreement with Timothy and Kristin Hawkins to conduct agricultural practices including ditch cleaning with agreed to stipulations. Petitioners further indicate their desire to withdraw their petition as against all non-farm owners, without prejudice to renew in the event their understandings with Mr. and Mrs. Hawkins "deteriorate beyond acceptance."

III. Order of Disposition

All issues raised by petitioners have either been settled or withdrawn. Accordingly, the August 24, 2012, petition is dismissed without prejudice, the hearing record is closed, and the matter is struck from the hearings docket.

/s/

James T. McClymonds
Chief Administrative Law Judge

Dated: April 29, 2014
Albany, New York