

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the order of field-wide well spacing
rules pursuant to Environmental Conservation Law
("ECL") § 23-0501 for the Terry Hill South Field
located in Chemung and Schuyler Counties, New York

INTERIM ORDER

(DEC File No. DMN 02-3)

Whereas:

1. This Interim Order relates to the proposal of the New York State Department of Environmental Conservation Staff ("Department") to establish well spacing units and set field-wide spacing rules in the Terry Hill South natural gas field ("the Field") in portions of Chemung and Schuyler Counties. The well spacing proposal is made pursuant to ECL Article 23, Title 5;

2. Pursuant to a Notice of Public Hearing published on November 6, 2002, a public hearing and an issues conference were held before Administrative Law Judge ("ALJ") Maria E. Villa on December 3, 2002, and December 4, 2002, respectively, at the Holiday Inn in Painted Post, New York;

3. As stated in the Notice of Public Hearing, Fairman Drilling Company ("Fairman") and Department Staff reached agreements on matters raised in the Department Staff's proposal and embodied those agreements in an executed Stipulation, dated October 9, 2002 ("Stipulation");

4. As stated in the Notice of Public Hearing, Fairman conveyed its interests in Terry Hill South Field to Fortuna Energy Inc. ("Fortuna") as of October 30, 2002;

5. By Administrative Order dated November 4, 2002, Fortuna assumed all outstanding regulatory responsibilities related to wells formerly owned by Fairman in the Field, including the agreements set forth in the Stipulation;

6. ALJ Villa's Ruling on Issues and Party Status dated June 17, 2004, found that there were no adjudicable issues raised by the petitioners for party status and denied all requests for party status ("Issues Ruling");

7. ALJ Villa's Ruling dated July 2, 2004, denied a motion for clarification ("Clarification Ruling");

8. Petitioners Buck Mountain Associates, Rural Energy Development Corp., Western Land Services, Inc., Florence Teed, Rae Lynn Ames and Linda and Terry Zahuranec¹ (collectively, "petitioners") appealed the Issues Ruling and the Clarification Ruling on July 14, 2004 and Department staff replied to the appeal on August 6, 2004; and

¹ By letter dated February 18, 2004, the ALJ was informed that the Zahuranecs have filed a bankruptcy petition and that bankruptcy trustee Douglas J. Lustig is pursuing, for the benefit of the bankruptcy estate, all claims of the estate for oil, gas and mineral rights.

9. As stated in my First Interim Decision, dated December 21, 2004, I found that petitioners failed to raise an adjudicable issue concerning the size and configuration of the boundaries of the Field and the spacing units proposed therein and I affirmed the ALJ's Issues Ruling with respect to these matters. Accordingly, I directed Staff to proceed with an order ("Interim Order") establishing Field boundaries and the proposed spacing units for the Field, and releasing escrowed royalties to the mineral rights owners in the Field other than petitioners (First Interim Decision, p. 15). The remainder of petitioners' appeal, including the terms of petitioners' integration into the compulsory integration order for the Field, will be addressed in a Second Interim Decision.

NOW, THEREFORE, having found that this order establishing spacing units in and setting field-wide spacing rules for the Field pursuant to ECL § 23-0501 is necessary to carry out the provisions of ECL § 23-0301, and that the spacing plan proposed in the Stipulation will result in the efficient and economical development of the gas pool as a whole, it is hereby ORDERED that:

I. Terms and conditions of the Stipulation executed by Fairman and Department Staff, dated October 9, 2002, including Exhibits "A" through "E", which are binding upon Fortuna by Administrative Order dated November 4, 2002, are hereby incorporated by reference into and made a part of this Interim Order as follows:

A. "Terry Hill South Field" means that area within the bold outline on Exhibit "A", and as extended or modified by additional wells drilled and completed pursuant to the Stipulation or this Interim Order;

B. The spacing units in the Field established by this Interim Order consist of the unit boundaries and parcels shown on Exhibits "A", "B1", "B2", "B3", "B4", "B5", "B6", "B7" and "B8". Only those separately owned tracts or parts thereof shown on the attached Exhibit "B1", "B2", "B3", "B4", "B5", "B6", "B7" and "B8" maps are included in the respective units; and

C. After the effective date of this Interim Order, the Department's well permitting and unit approval procedures for future wells in the Field will be in accordance with Paragraphs IV.A, B, C, D, E, F.1, F.2, F.3, G and H of the Stipulation;

II. As set forth in the Stipulation, Fortuna may prepare updated Exhibits "A" and "B1" - "B8" which reflect changes in property ownerships and descriptions, if necessary, within 90 days of the effective date of this Interim Order and make them part hereof;

III. Fortuna is the operator of the spacing units for the Existing Wells listed in the Stipulation. A well, known as Hammond #1, has since been drilled in the Colson #1 spacing unit. Accordingly, the Colson #1 spacing unit is now referred to as the Hammond #1 spacing unit;

IV. Fortuna is authorized to immediately release royalty payments for the spacing units established by this Interim Order to all of Fortuna's lessors and other mineral rights owners in the spacing units except for petitioners. Royalty payments for non-lessors other than petitioners are to be equal to the lowest royalty fraction, but not less than one-eighth, contained in any oil and gas lease within each respective spacing unit;

V. Fortuna is directed to continue to hold royalty payments attributable to parcels owned by or leased to petitioners in an interest-bearing account until a compulsory integration order is issued for the Field pursuant to ECL § 23-0901. Such royalty payments are to be equal to the lowest royalty

fraction, but not less than one-eighth, contained in any oil and gas lease within each respective spacing unit;

VI. As set forth in the Stipulation, Fortuna shall file a copy of this Interim Order, including the Stipulation and Exhibits "A" and "B1", "B2", "B3", "B4", "B5", "B6", "B7" and/or "B8" with the Chemung and/or Schuyler County Clerk against all parcels in each respective spacing unit established by this Interim Order and shall submit proof of such filing to the Director of the Bureau of Oil and Gas Regulation in the Department's Division of Mineral Resources by three months after the effective date of this Interim Order.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ERIN M. CROTTY, COMMISSIONER

Erin M. Crotty

Dated: January 13 , 2005
Albany, New York

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