

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF TOMPKINS

ANSCHUTZ EXPLORATION CORPORATION,

Petitioner-Plaintiff,

-against-

For a Judgment Pursuant to Articles 78 and 3001
of the Civil Practice Law and Rules,

TOWN OF DRYDEN and TOWN OF DRYDEN
TOWN BOARD,

Respondents-Defendants.

**VERIFIED PETITION
AND COMPLAINT**

Index No.: _____

Petitioner-Plaintiff Anschutz Exploration Corporation (“Anschutz”), by their attorneys,
The West Firm PLLC, for its Verified Petition and Complaint, allege as follows:

NATURE OF PROCEEDING

1. Anschutz brings this special proceeding pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) and a plenary action for declaratory judgment pursuant to CPLR Article 3001, to declare illegal, null and void (1) Resolution No. 126 of 2011, entitled “Resolution in Support of Adopting Amendments (the “Zoning Amendments”) to the Town of Dryden Zoning Ordinance (the “Zoning Ordinance”) Clarifying the Town’s Prohibition of Natural Gas Exploration and Extraction, a Resolution of the Town of Dryden” (hereinafter the “Resolution”), which was adopted by unanimous vote and effective on August 19, 2011, (2) the Zoning Amendment adopted by the Resolution, and (3) the Zoning Ordinance to the extent that it is interpreted to ban or regulate oil and gas exploration and development in the Town of Dryden. Anschutz further seeks injunctive relief pursuant to Article 63 of the CPLR enjoining

Respondents-Defendants from implementation and enforcement of the Resolution, the Zoning Amendment and the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas exploration, development and production in the Town Dryden (“Town”).

2. The Resolution amends the long-standing Zoning Ordinance of the Town and prohibits all oil and gas exploration and extraction activities in the Town. The Resolution’s vast definition of “natural gas and/or petroleum exploration” includes, “geologic or geophysical activities related to the search for natural gas, petroleum, or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits. The Resolution broadly defines “natural-gas and/or petroleum extraction” as “the digging or drilling of a well for the purposes of exploring for, developing, or producing natural gas, petroleum or other subsurface hydrocarbons.”

3. As a result of the Resolution, the long-standing Zoning Ordinance has been amended to include a new Section 2104 entitled “Prohibited Uses” (the Zoning Amendment). The Zoning Amendment codifies the Resolution and provides that oil and gas extraction, development and other related activities are prohibited in the Town.

4. The Resolution purports to clarify the Zoning Ordinance, irrespective of the Zoning Amendment, to interpret the Zoning Ordinance to prohibit oil and gas extraction, development, and other related activities notwithstanding the fact that the Zoning Ordinance has never been interpreted to that effect.

5. Upon information and belief, natural gas development and other related activities has been previously undertaken in the Town without any assertion by the Town that the Zoning Ordinance is applicable to such activities.

PARTIES

6. Anschutz is a driller and developer of oil and natural gas wells, registered to do business within the State of New York, and with a principal place of business at 555 Seventeenth Street, Denver, Colorado. Anschutz is the owner, as the successor by merger with Ansbro Petroleum Company, LLC, of oil and gas leases covering approximately 22,200 acres in the Town which authorize Anschutz to, among other things, explore for, develop, and produce natural gas from their lease holdings. Anschutz has invested approximately \$5,100,000.00 in acquiring its leasehold position in the Town and in developing the acreage by, among other things, conducting seismic evaluations and other geological assessments.

7. The Resolution, Zoning Amendment and Zoning Ordinance (to the extent that it is applied to ban, restrict or regulate oil and gas extraction, development, production and related activities) prevent Anschutz from developing its leased acreage. It will, therefore, have lost its investment in acquiring its oil and gas leases in the Town and developing the acreage covered by the oil and gas leases through geological assessments as well as a loss in development opportunity by being prevented from drilling in an area believed to be prospective for Marcellus and Utica shales. As a result, Anschutz has been aggrieved.

8. Respondent-Defendant, Town of Dryden ("Town") is a New York municipality located in Tompkins County.

9. Respondent-Defendant, Town of Dryden Town Board is the entity authorized in the Town to, among other things, make final decisions which affect the entire Town, amend the Zoning Ordinance, and enact local laws for the Town.

JURISDICTION AND VENUE

10. Pursuant to CPLR § 506(b), Anschutz commences this action in Tompkins County, the county within which the oil and gas leases at issue are located, and the county in which the Respondents-Defendants took the challenged action.

11. This Court has jurisdiction pursuant to CPLR § 7803(2)-(3) because Respondents-Defendants' determination to adopt the Resolution was in excess of their jurisdiction. The Court also has jurisdiction pursuant to CPLR § 3001 to render declaratory relief declaring the Resolution, the Zoning Amendment and the Zoning Ordinance (to the extent that it is applied to ban, restrict or regulate oil and gas development, production and related activities) illegal, null and void and preempted by State law. This Court also has jurisdiction pursuant to CPLR 63 to grant injunctive relief necessary to implement the relief requested herein.

FACTS

12. On August 2, 2011, Respondents-Defendants held a Special Town Board Meeting to adopt amendments to the Zoning Ordinance, expressly prohibiting oil and gas exploration and extraction. There, Respondents-Defendants unanimously passed the Resolution.

13. Upon information and belief, the Respondents-Defendants published the Resolution on August 9, 2011.

14. Pursuant to section 264 of New York's Town Law, the Resolution took effect on August 19, 2011.

15. In the Resolution, Respondents-Defendants declare that exploration and extraction of oil and gas and the storage, transfer, treatment or disposal of oil and gas exploration and production wastes is prohibited within the Town.

16. The Resolution further declares that any local, state, or federal permit would be deemed invalid if contrary to the Zoning Ordinance as amended.

17. In particular, the Resolution amended the Zoning Ordinance, adding in relevant part:

Section 2104. Prohibited Uses

1) Prohibition against the Exploration for or Extraction on Natural Gas and/or Petroleum.

No land in the Town shall be used: to conduct any exploration for natural gas and/or petroleum; to drill any well for natural gas and/or petroleum; to transfer, store, process or treat natural gas and/or petroleum; or to dispose of natural gas and/or petroleum exploration or production wastes; or to erect any derrick, building, or other structure; or to place any machinery or equipment for any such purposes.

2) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Materials.

No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production materials.

3) Prohibition against the Storage, Treatment and Disposal of Natural Gas and/or Petroleum Exploration and Production Waste.

No land in the Town shall be used for: the storage, transfer, treatment and/or disposal of natural gas and/or petroleum exploration and production wastes.

4) Prohibition against Natural Gas and/or Petroleum Support Activities.

No land in the Town shall be used for natural gas and/or petroleum support activities.

5) Invalidity of Permits.

No permit issued by any local, state or federal agency, commission or board for a use which would violate the prohibitions of this section or of this Ordinance shall be deemed valid within the Town.

18. Respondents-Defendants assert authority under Town Law §§ 261, 262, 264 and 265 to pass the Resolution, amend the Zoning Ordinance, interpret the Zoning Ordinance to prohibit oil and gas extraction, development, production and related activities and “prohibit the exploration and extraction of natural gas and or petroleum and the storage, treatment or disposal of natural gas exploration and production wastes within the Town[.]”

**FIRST CLAIM FOR RELIEF AND CAUSE OF ACTION
(EXPRESS PREEMPTION)**

19. Anschutz repeats and realleges the allegations set forth in paragraphs 1 through 18 as if fully set forth herein.

20. New York’s Oil, Gas and Solution Mining Law, as amended in 1981, supersedes all local ordinances relating to natural-gas drilling, subject only to two limited exceptions for the exercise of jurisdiction by local governments: local roads and property taxes.

21. Pursuant to Section 23-0303(2) of New York’s Environmental Conservation Law (“ECL”):

The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.

22. The Oil, Gas and Solution Mining Law, therefore, expressly preempts not only inconsistent local legislation, but also *any* local law which attempts to regulate oil and gas

extraction, exploration and development, as the Legislature clearly intended State law to supersede all local ordinances in the area of oil and gas regulation, including zoning.

23. The New York Department of Environmental Conservation (“DEC”)’s current Generic Environmental Impact Statement (“1992 GEIS”) that applies to New York’s oil and gas program confirms this intent wherein it specifies that the Legislature was concerned that local ordinances regulating oil and gas extraction, exploration and development might result in conflicting laws and recognized the need for technically-sound regulation, difficult at the local level.

24. By reason of the foregoing, Respondents-Defendants acted without and in excess of jurisdiction.

25. Anschutz has no adequate remedy at law.

26. By reason of the foregoing, Anschutz is entitled to a determination that the Resolution, the Zoning Amendment and any attempt to interpret the Zoning Ordinance to ban, restrict or regulate oil and gas extraction, exploration, development and related activities are preempted by Article 23 of the ECL and, therefore, are invalid, unlawful and unenforceable.

**SECOND CLAIM FOR RELIEF AND CAUSE OF ACTION
(CONFLICT PREEMPTION)**

27. Anschutz repeats and realleges the allegations set forth in paragraphs 1 through 26 as if fully set forth herein.

28. Where a State concern is involved, the Legislature has the exclusive power to enact laws. A local government may not exercise its police power by adopting a local law inconsistent with any constitutional or general law, and the legislature shall restrict adoption of said law.

29. Pursuant to Article 23 of the ECL, the Legislature intended to preempt local regulation, including zoning, of the oil and gas industry. It further intended to “prevent waste,” provide for the “greater ultimate recovery of oil and gas” and protect the correlative rights of all owners, including landowners. ECL § 23-0301.

30. In furtherance of these objectives, New York State has adopted an extensive regulatory program detailing the location of wells, the spacing of well units, the participation of landowners and detailed requirements to protect public health, safety and welfare.

31. The Resolution, Zoning Amendment and Zoning Ordinance (to the extent that it is interpreted to ban, restrict or regulate oil and gas extraction, exploration and development) prohibit what is authorized under State law; namely, the exploration and development of oil and gas in the entire state.

32. The Resolution, Zoning Amendment and Zoning Ordinance (to the extent that it is interpreted to ban, restrict or regulate oil and gas extraction, exploration and development) conflict with Article 23 of the ECL and further frustrate the purpose and policy objectives of the statutory and regulatory scheme administered by the State of New York.

33. By reason of the foregoing, Respondents-Defendants acted without and in excess of jurisdiction.

34. Anschutz has no adequate remedy at law.

35. By reason of the foregoing, Anschutz is entitled to a determination that the Resolution, the Zoning Amendment and the Zoning Ordinance (to the extent that it is interpreted to ban, restrict or regulate oil and gas extraction, exploration and development) are preempted by Article 23 of the ECL and, therefore, are invalid, unlawful and unenforceable.

**THIRD CLAIM FOR RELIEF AND CAUSE OF ACTION
(INJUNCTION)**

36. Anschutz repeats and realleges the allegations set forth in paragraphs 1 through 35 as if fully set forth herein.

37. Respondents-Defendants have acted in violation of Anschutz's rights by adopting the Resolution and are threatening and about to further act in violation of Anschutz's rights by implementing and enforcing the Resolution, the Zoning Amendment and the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration and development in the Town.

38. Anschutz is entitled to injunctive relief pursuant to Article 63 of the CPLR enjoining Respondents-Defendants from implementation and enforcement of the Resolution, the Zoning Amendment and the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration and development in the Town.

39. Anschutz has no adequate remedy at law.

WHEREFORE, Anschutz respectfully requests that the Court issue an Order:

1. determining that Respondents-Defendants' adoption of the Resolution was without and/or in excess of jurisdiction;
2. declaring the Resolution to be invalid, unlawful and unenforceable;
3. declaring the Zoning Amendment (Section 2104) to be invalid, unlawful and unenforceable;
4. declaring that any attempt to interpret the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration, development or related activities is invalid, unlawful and unenforceable;

5. entering a preliminary and permanent injunction enjoining Respondents-Defendants from enforcing or implementing the Resolution, Zoning Amendment and/or any interpretation of the Zoning Ordinance in a manner that bans, restricts or regulates oil and gas extraction, exploration, development or related activities; and
6. such other and additional relief that the Court deems just and appropriate.

Dated: September 16, 2011
Albany, New York

THE WEST FIRM, PLLC

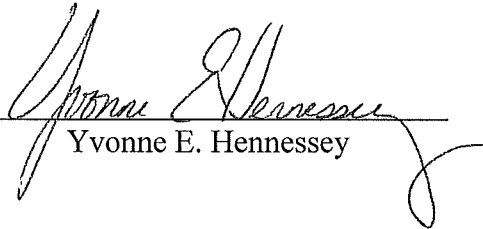
By: 

Thomas S. West
Yvonne E. Hennessey
Attorneys for Petitioner-Plaintiff
Anschutz Exploration Corporation
677 Broadway – 8th Floor
Albany, New York 12207
(518) 641-0500

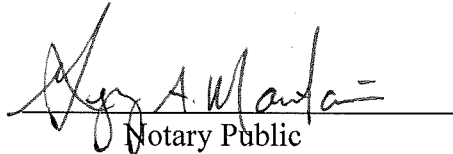
VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

Yvonne E. Hennessey, being duly sworn, states that she is the attorney for Petitioner Anschutz Exploration Corporation ("Anschutz") in this action and that the foregoing is true to her own knowledge, except as to matters therein stated on information and belief and as to those matters she believes to be true; that the grounds of her belief and as to those matters not stated upon her knowledge are correspondence and other writings furnished to her by Anschutz; and that the reason why the verification is not made by Anschutz is that Anschutz does not have an office in the county where she has an office.


Yvonne E. Hennessey

Sworn to before me this
16th day of September, 2011


Notary Public

GREGORY A. MOUNTAIN
Notary Public, State of New York
Qualified in Columbia County
No. 02MO6054126
Commission Expires January 29, 2015