

INTRODUCTION

1. The Commission, purporting to interpret and rely on Section 3.8 of the Compact, claims discretionary authority to review, approve, and thereby regulate nearly all forms of human activity in the Basin, including the use of private land for residential, commercial and industrial purposes.

2. The Commission's position, distilled to its essence, is that any activity, development or other human undertaking in the Basin that uses water in some manner is a "project" that the Commission has the prerogative to review and approve if the Commission believes that the undertaking may have a "substantial effect" on the water resources of the Basin.

3. Because it is difficult, if not impossible, to identify an undertaking in the Basin that does not involve water in some manner, the Commission's discretionary "project" review authority purportedly extends to nearly every form of human endeavor in the Basin, subject only to the Commission believing, in a given case, that a proposed "project" may have a "substantial effect" on the water resources of the Basin.

4. The Commission, relying on the enormous power that it contends has been delegated to it by Section 3.8 of the Compact, and seeking to placate those State governments and special interest groups opposed to natural gas development, has declared that all natural gas well pads and related facilities targeting shale formations in the Basin are “projects” that it will review under Section 3.8 of the Compact.

5. In addition to asserting that well pads and related facilities are “projects” that it must approve before they are constructed, the Commission has announced that it will not review applications for well pads and related facilities, and associated activities, until it adopts governing regulations. This moratorium, which amounts to a ban on the lawful use of land that cannot be remedied at the ballot box, has been in effect since 2010.

6. WLMG, by this Complaint, seeks relief from the Commission’s *ultra vires* assertion of jurisdiction and related dictate that WLMG is prohibited from constructing a well pad and drilling a natural gas well without Commission approval.

7. WLMG, as partial relief for the trampling of its constitutionally protected rights, and seeking to make otherwise lawful

use of its property, requests that the Court declare that the Commission does not have authority to require WLMG to apply for and obtain Commission “project” approval for a natural gas well pad and related facilities targeting natural gas in shale formations on WLMG’s property.

JURISDICTION AND VENUE

8. This action arises under the Compact. The Commission is asserting jurisdiction, pursuant to Section 3.8 of the Compact, over the construction of a well pad, appurtenant facilities, and unspecified “related” activities, associated with the drilling, completing and operating of a gas well targeting shale formations on private property owned by WLMG.

9. The Commission’s assertion of jurisdiction is based on its current interpretation of Section 3.8 of the Compact, which provides for Commission approval of “projects,” and its related assertion that natural gas well pads and related infrastructure associated with exploration and production wells targeting shale formations, together with related activities conducted on the well pads, constitute “projects” as that term is defined in the Compact.

10. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because it raises a federal question, and under the statute effectuating the Compact, Pub. L. 87-328, 75 Stat. 688, § 15.1(p) (1961), because this action arises under the Compact. WLMG seeks declaratory and other appropriate relief under 28 U.S.C. §§ 2201 and 2202.

11. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b).

PARTIES AND THE PROPERTY

12. WLMG resides, and owns approximately 180 acres of land, including the natural gas and minerals present on the land, in Wayne County, Pennsylvania. Approximately 75 acres of the land owned by WLMG is located in the Basin (the “Property”).

13. The Property is located in a part of the Basin that overlays natural gas reserves in shale formations.

14. The Commission is an agency created by, and with only such authority as is expressly conferred on it by, the Compact. The Compact is an agreement among the United States, New York, Pennsylvania, New Jersey, and Delaware, as approved by Congress in 1961.

BACKGROUND

A. “Project” Review.

15. Section 3.8 of the Compact states: “No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission”

16. For purposes of Section 3.8 of the Compact, a “project” is: “any work, service or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken within a specified area, for the conservation, utilization, control, development or management of water resources which can be established and utilized independently or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.”

B. The Commission's Assertion of Jurisdiction Over Natural Gas Well Pads and Related Facilities and Activities.

17. The Commission, purporting to rely on authority to review and approve proposed "projects" pursuant to Section 3.8 of the Compact, has determined, and, by publicly announcing its position, has informed WLMG and other landowners in the Basin, that it has jurisdiction over natural gas well pads, all appurtenant facilities, and related activities carried out in connection with gas wells targeting shale formations in the Basin (collectively "Well Pads").

18. The Commission, as the basis for its assertion of jurisdiction, has determined, and publicly announced, that Well Pads constitute "projects" that cannot be constructed or undertaken in Wayne County, Pennsylvania and other areas of the Basin with first applying for and obtaining Commission approval.

19. The Commission has also announced that it will not consider applications for approvals for Well Pads, which are referred to by the Commission as "well pad dockets," until after it adopts regulations purporting to govern Well Pads.

20. The Commission's *de facto* moratorium on the otherwise lawful use of private property for natural gas development has been in force since 2010 and the Commission has yet to adopt regulations governing Well Pads.

C. WLMG's Planned Development of the Property.

21. WLMG acquired the Property with an intent to explore for, extract and sell the natural gas located in shale formations associated with the Property and other nearby land in order to recoup, and earn a reasonable return on, its investment in the Property.

22. WLMG will proceed in phases, beginning with the construction of an access road and well pad on the Property.

23. WLMG has identified a location for the access road and well pad on the Property, taking into account siting requirements.

24. After the access road and well pad are constructed, WLMG will drill an exploratory well to locate productive zones of natural gas located in shale formations on the Property. The next phase of development will include the drilling of one or more lateral wells followed by hydraulic fracturing and, ultimately, the production of natural gas.

25. Pennsylvania has adopted comprehensive environmental regulations governing all phases of the development of natural gas resources within Pennsylvania. Pursuant thereto, persons and entities seeking to construct well pads and appurtenant facilities, and proposing to carry out related activities such as drilling, fracturing, completing and operating natural gas wells in Pennsylvania, must obtain permits and approvals from the Pennsylvania Department of Environmental Protection (“PaDEP”).

26. The well pad and appurtenant facilities to be constructed on the Property, as well as related activities to be carried out on the Property, will be designed, constructed and carried out in accordance with all applicable statutory and regulatory requirements including those implemented by PaDEP.

27. The well pad and the appurtenant facilities to be constructed on the Property, as well as all related activities to be carried out on the Property, will be designed, built, operated and carried out for the exploration, extraction and development of natural gas and not for the conservation, utilization, control, development or management of water resources.

28. WLMG does not propose to develop, construct or operate a water withdrawal, dam, impoundment or reservoir, or to construct or operate a wastewater treatment or discharge facility in connection with the development on the Property.

29. All water used in connection with the planned Well Pad on the Property will be obtained from properly licensed and approved sources owned and operated by persons or entities other than WLMG, will be managed and delivered to the Well Pad in accordance with all applicable laws and regulations and any applicable fees will be paid.

30. All wastewater generated in connection with the Well Pad on the Property will be managed by properly licensed and/or permitted entities other than WLMG in accordance with all applicable laws and regulations.

31. When the obstacle created by the Commission's assertion of project approval jurisdiction is removed, WLMG will make the substantial investment associated with obtaining, and take steps necessary to secure, all required permits and approvals from PaDEP and, upon receipt of same, will carry out its plans for the Property.

32. It would be futile and wasteful for WLMG to apply for permits and approvals from PaDEP before resolving the insurmountable obstacle created by the Commission's assertion of jurisdiction and imposition of a moratorium. Permits and approvals issued by PaDEP are valid for defined and limited periods of time and, moreover, PaDEP will not issue final permits and approvals for a Well Pad over which the Commission has asserted jurisdiction and project review authority until after the Commission reviews and approves the Well Pad.

33. Given the Commission's decision not to consider well pad dockets until some indefinite point in the future, it would be futile for WLMG to apply for Commission approval for the Well Pad to be developed on the Property.

34. WLMG, moreover, should not be required to engage in an expensive, time consuming and ultimately futile exercise of attempting to obtain review and approval by the Commission for its Well Pad where, as set forth above, no such review and approval is required under the Compact.

D. Harm To WLMG.

35. The Commission's final determination that Well Pads constitute "projects" subject to Commission review and approval under Section 3.8 of the Compact has an immediate and practical impact on WLMG. The Commission's unlawful assertion of jurisdiction is an absolute barrier to WLMG's ability to move forward with its plan to develop a Well Pad on the Property.

36. Other than the Commission's unlawful assertion of jurisdiction over a Well Pad on the Property, an injury to WLMG which has been aggravated by imposition of the *de facto* moratorium, there are no known impediments to WLMG securing all permits and approvals necessary for the construction and operation of its Well Pad. Thus, the sole, insurmountable obstacle to the development of the Property as described herein is the Commission's unlawful assertion of jurisdiction.

37. As a result of the Commission's unlawful assertion of jurisdiction, WLMG is unable to develop a Well Pad on the Property and to thereby recoup its upfront costs and earn a reasonable return on its investment. Among other things, WLMG is unable to drill an exploratory well in order to precisely identify productive gas zones on the Property

and, thereby, to immediately increase the value of the Property and WLMG's nearby land.

38. The Commission is authorized to seek civil penalties from a person who undertakes a "project" without Commission approval pursuant to Section 3.8 of the Compact. Specifically, Section 14.17 of the Compact provides that a person, association or corporation who violates or attempts or conspires to violate a provision of the Compact or a rule, regulation or order of the Commission may be liable for a penalty of as much as \$1,000 for each offense and \$1,000 per day for a continuing violation, attempt or conspiracy to be fixed by a court of competent jurisdiction.

39. The Commission's final determination regarding its jurisdiction and authority under the Compact puts the public on notice that persons that construct well pads and appurtenant facilities, or that engage in related activities, in connection with wells targeting shales located in Wayne County and other areas of the Basin without prior authorization from the Commission that they are at risk of incurring substantial civil penalties and other potential enforcement actions.

40. WLMG must choose between proceeding in the face of incurring substantial civil penalties and other sanctions or waiting for the Commission to lift the moratorium at some indefinite point in the future and then incurring the substantial expense of seeking Commission approval for an undertaking over which the Commission does not have jurisdiction.

41. In light of the fact that the Commission is not considering applications for project approval of Well Pads, WLMG must choose between the substantial risks associated with proceeding without Commission approval or indefinitely deferring otherwise lawful use of the Property.

42. The Commission's assertion of jurisdiction over otherwise lawful use of land in connection with natural gas extraction by WLMG, as well the Commission's assertion of jurisdiction over "related" activities, materially and adversely affects WLMG by interfering with WLMG's right to use the Property in conducting a lawful business activity. The material and adverse effect on WLMG's rights to use the Property and to conduct a lawful business activity is caused by the

Commission's unlawful assertion of jurisdiction, not simply by the existence of the Compact.

43. A decision in favor of WLMG in this case will remove the sole insurmountable barrier to WLMG's plan to develop the Property in the manner described in this complain and also will result in an increase in the market value of the Property and nearby land owned by WLMG.

44. Absent the relief requested herein, WLMG will be deprived of its constitutionally protected right to use its Property in a lawful and productive manner. In addition, WLMG will incur economic injury in that it will be prevented from confirming the full scope of, and then extracting and selling natural gas associated with, the Property and also from benefiting from an increase in the market value of the Property which will follow the drilling of an exploratory well.

COUNT I – DECLARATORY JUDGMENT

45. WLMG repeats and re-alleges paragraphs 1 through 44 of this complaint as if fully set forth herein.

46. The Commission’s “project” approval jurisdiction does not extend to all human undertakings that may have a substantial effect on the water resources of the Basin.

47. The Commission’s project approval jurisdiction under Section 3.8 of the Compact is limited to “projects” that have a substantial effect on the water resources of the Basin

48. The Well Pad as proposed by WLMG does not constitute a “project” under Section 3.8 of the Compact.

49. Because WLMG’s proposed Well Pad does not constitute a “project,” the Commission lacks authority under Section 3.8 of the Compact to require WLMG to obtain Commission approval for the Well Pad.

50. Because WLMG’s proposed Well Pad does not constitute a “project,” it is irrelevant whether or not the Commission believes that the proposed Well Pad may have a substantial effect on water resources in the Basin.

51. The Commission otherwise lacks authority to require WLMG to submit for its review, and to obtain its prior approval for, the proposed Well Pad.

52. The Commission, in asserting jurisdiction over WLMG's proposed Well Pad, is misconstruing and unlawfully exceeding its authority under the Compact.

53. The Commission, in asserting jurisdiction over, and by precluding the development of WLMG's proposed Well Pad, has and will continue to deprive WLMG of constitutionally protected rights.

WHEREFORE, WLMG requests that the Court:

1. Declare that the Commission does not have jurisdiction over, or the authority to review and approve, or to require WLMG to seek prior approval from the Commission for, or to otherwise preclude the development of, WLMG's proposed well pad, appurtenant facilities or the related activities to be carried out on the Property.
2. Grant such further relief as the Court deems appropriate.

Respectfully submitted,

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