

## Natural Gas Case Law Brief

*Belden & Blake Corp. v. Pa. Dep't of Conservation and Natural Res.*  
No. 35 MAP 2007; 969 A.2d 528 (Pa. Apr. 29, 2009)

Summary prepared by Michael Magee on June 11, 2010

This case concerned Belden & Blake's (Belden) claim to subsurface oil and gas rights below three parcels of land in Oil Creek State Park. In December of 2004, Belden notified Pennsylvania's Department of Conservation and Natural Resources (DCNR) that it was planning to access its oil and gas by building wells on these parcels. Pursuant to the Oil and Gas Act, Belden submitted well drilling permit applications and maps of the proposed sites, and it also posted bond to ensure well closure, site reclamation, and pollution remediation. 58 PA. STAT. §§ 601.201(a), 601.215(a)(1). DCNR sought to impose additional requirements in a "coordination agreement," including \$10,000 postings for each well and costs doubling the fair market value of the timber that would need to be removed to build the wells.

Belden sought declaratory and equitable relief in the Commonwealth Court, arguing that it had an implied easement to access the land in order to retrieve the oil and gas and that it was only required to use the surface area reasonably when doing so. Belden claimed to have met the reasonable use requirement by submitting all of its plans to DCNR. DCNR argued that it was authorized to condition the surface use of state parks under Article I, § 27 of the Pennsylvania Constitution, and that it was obligated to preserve state parks under § 303 of the Conservation and Natural Resources Act. 71 P.S. § 1340.303. The Commonwealth Court, relying on *Chartiers Block Coal Co. v. Mellon*, 25 A. 597, 598 (Pa. 1893), granted partial summary judgment in favor of Belden, finding that Belden had met its duty to exercise its property rights in a reasonable manner with respect to the surface owner's rights. DCNR appealed.

The Pennsylvania Supreme Court reviewed the lower decision de novo. *The issue was whether or not the Commonwealth Court took proper account of the balance that needs to be struck between the subsurface owner's rights and the surface owner's rights.* DCNR did not seek to restrict Belden from accessing its property, but rather sought to require greater efforts by Belden as part of its duty to use the surface reasonably because the surface was within a state park. Belden argued that greater efforts were comparable to a taking by the state without compensation.

*The Court found that the partial summary judgment granted on Belden's behalf was warranted.* Under *Chartiers*, subsurface owners are entitled to access their property in a reasonable manner, and Belden's actions met that standard. The Court noted that it is not the subsurface owner's duty to seek legal redress when his or her access to the subsurface is restrained by the surface owner; rather, it is the surface owner's burden to seek legal redress when he or she believes that the subsurface owner's actions are unreasonable. DCNR had no authority to unilaterally increase the reasonability threshold to be met by Belden. According to the Court, "A subsurface owner's rights cannot be diminished because the surface comes to be owned by the government." DCNR could have mandated that further steps be taken by Belden, but not without judgment to that effect by a court sitting in equity.



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