

Court of Appeals
of the
State of New York

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NEW YORK STATE
COURT OF APPEALS

In the Matter of the Application of the SIERRA CLUB; PEOPLE FOR A
HEALTHY ENVIRONMENT, INC.; COALITION TO PROTECT NEW YORK;
JOHN MARVIN; THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners-Appellants,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

(For Continuation of Caption See Inside Cover)

RECORD ON APPEAL
Volume 2 of 2 (Pages 345 to 661)

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of the
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– against –

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP;

Respondents-Respondents,

and the WELLSBORO AND CORNING RAILROAD, LLC,

Respondent-Respondent.

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AFFIDAVIT OF LARRY SMITH, IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE PETITION, SWORN TO ON AUGUST 1, 2012 [345-354]

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSIŃSKI,

Petitioners,

AFFIDAVIT IN SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT,
AND IN OPPOSITION TO
THE PETITION

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

Index No.: 2012-0810

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

LARRY E. SMITH, being duly sworn deposes and says:

1. I am the Superintendent of Public Works for the Village of Painted Post ("Village") and I have held this position since 2006. I have been a resident of the Village of Painted Post and the surrounding area for over 25 years. The statements made in this Affidavit are based upon my personal knowledge, including my knowledge of the Village Water Supply System ("the Village System") and its capacity (the capacity of the Village System may be referred to as "the Village Water Supply").

2. My responsibilities as the Superintendent of the Department of Public Works include overseeing the operation of the Village System. Further, as Superintendent, I have knowledge of the construction of equipment and facilities (the "Transloading Facility") at the former

Ingersoll- Rand site located on 450 West Water Street in Painted Post, New York comprising the Transloading Facility (the “Transloading Facility Site”) that will be operated by Respondent Wellsboro & Corning Railroad, LLC (the “Railroad”) and used to transport surplus water to be sold under the Village’s contract with Respondent SWEPI, LP (“SWEPI”).

3. I submit this Affidavit in Support of Respondents’ motion to dismiss and/or for summary judgment, and in opposition to the Petition. In particular, I submit this Affidavit to correct a number of erroneous statements contained in the Petition in this matter. The errors and misstatements include incorrect assertions concerning the Village System, including the capacity of it, the approval process associated with the sale of surplus Village water, as well as operations associated with the Transloading Facility.

A. As Confirmed By The Approvals Issued By The Susquehanna River Basin Commission, And Analyses Completed By The Village Including At Its Direction, The Village Has More Than Adequate Capacity To Supply Surplus Water To SWEPI And There Is No Basis For Any Claims That Such Surplus Water Sales Will Result In Adverse Consequences.

4. The Petition erroneously implies that the Village System does not have sufficient capacity to provide surplus water under the Surplus Water Sale Agreement executed by the Village and SWEPI (the “Surplus Agreement”), by citing to carefully excerpted passages taken out of context from various reports, with some of the reports cited being more than 20 years old. In fact, the Village Water Supply has more than adequate capacity to provide surplus water as provided for in the Surplus Agreement. In any event, as provided for in the Surplus Agreement, the Village is not required to supply such surplus water unless certain conditions are met, including that the Village is not required to sell such surplus water if in doing so it would adversely impact current users of the Village System or the Village Water Supply is for some reason unable to provide such water.

5. By way of background, the Village Water Supply is drawn from (3) wells located in the west end of the Village. Village Well No.1, which is not operational and has not been for some

time was abandoned and removed from service and is the current location of the Village Water Treatment Plant. Village Well No. 2 (WSA-1508) is located near the intersection of Steuben Street and Fairview Ave. Village Well No. 3 (WSA-2996) is located along Craig Park Drive adjacent to New York State Route 415. Village Well No. 4 (WSA-6474) is located at the intersection of Maple Ave and West High Street.

6. Well Nos. 2 through 4 is permitted wells and each is currently in service with a total authorized production capacity of over 4 million gallons per day. Specifically, Well No 2 has a capacity of 1000 gallons per minute (gpm) for a daily total of 1.44 million gallons; Well No. 3 has a capacity of 700 gpm for a daily total of 1.008 million gallons; and Well No. 4 has a capacity of 1200 gpm for a daily total of 1.728 million gallons. Thus, the total capacity of the three wells is more than 4.17 million gallons per day. Village Wells Nos. 3 and 4 are the primary production wells for the Village, with Well No. 2 serving as an emergency backup well.

7. Contrary to allegations in the Petition, Well No. 1 is not being used for withdrawal of water for any purpose. Further, no new piping was added as part of the existing Village wells to pump water to be used to supply surplus water, rather some piping extending existing pipes so water can be loaded onto rail cars was added as part of the Transloading Facility. Further, despite allegations to the contrary, the Village is not leasing or selling any components of the Village System to the Railroad or to SWEPI. As detailed in the Administrative Record in this matter, the Railroad constructed certain equipment and improvements at the Transloading Facility Site simply to facilitate the conveyance of surplus water from the Village System for transport by rail and to meter same.

8. The Petition also claims there is increased risk that the Village Water Supply or aquifers associated with it will be contaminated from the withdrawal of such surplus water due to the

conditions at the Transloading Facility Site. In sum, the Petition claims that because the Transloading Facility site is located on a portion of the former Ingersoll-Rand site (which was formerly listed as an inactive hazardous waste site due to contamination from former industrial operations there) that contamination may be drawn from the Ingersoll-Rand site into the aquifer at issue, but there is no basis for such a claim.

9. In fact, any such claims or alleged concerns are contradicted by the New York State Department of Environmental Conservation's ("NYSDEC") decision to remove former Ingersoll-Rand site from the inactive hazardous waste site list, which included NYSDEC's certification that such site no longer poses concerns from environmental contamination. Moreover, as detailed in the record in this matter, as well as set forth in the Affidavit of Robert Drew, a principal with Hunt Engineers, Architects & Land Surveyors, P.C. ("Hunt"), which firm was involved in the planning, development and construction of the improvements and equipment for the Transloading Facility Site, extensive stormwater controls, and other measures required to be followed at the former Ingersoll-Rand site for any improvements and operations on it were followed during such construction, including those to prevent any impacts to stormwater and surface water. In addition, as documented in Mr. Drew's affidavit, substantial testing taken during construction of the Transloading Facility Site showing no contaminants of concern and further confirms that there are no legitimate issues associated with contamination. Moreover, there is no prohibition placed on the former Ingersoll-Rand site by any agency including NYSDEC or the New York State Department of Health (NYSDOH) from withdrawing water from the Village System from the piping located there.

10. Moreover, required notices were made to applicable agencies including to the NYSDOH and the NYSDEC and permits and approvals required were applied for and received for construction of the Transloading Facility. In addition, periodic testing required to be undertaken by

the Village to identify contamination of water associated with the Village Supply is ongoing, and there is no indication of contamination of it from any source.

11. Based on my review of Village records, including those showing the capacity of the Village System, as well as my experience as Superintendent of the Department of Public Works, the Village Water System currently has more than adequate capacity to provide water to all of the Village Water customers and has a significant excess capacity which will allow the sale of surplus water. Many years ago, the Ingersoll-Rand facility produced among other products, iron products and other products, and there were other businesses in the area that used water as well, and the Village Water System had more than adequate capacity to provide water to those industrial users, as well as more than adequate capacity to provide sufficient water to its other users. Since the closing of Ingersoll-Rand and other industries in the Village, the Village has had substantial excess water supply capacity as users of the Village water have made significantly reduced demands on it.

12. Petitioners claim that water previously purchased from the Village by industries located in Village of Painted Post and otherwise was largely "returned" to the same aquifer from which it was removed, and the use associated with the sale of surplus water to SWEPI will not be so returned, but the Petition provides no basis for this claim. In any event, as detailed below, the Susquehanna River Basin Commission ("SRBC") is charged with considering the capacities of aquifers in the Susquehanna River Basin in ruling on applications for water withdrawal, including the withdrawal at issue here, and after undertaking consideration of the applications at issue here for the withdrawal of surplus water, the Commission approved it.

13. Previously, applications were submitted to SRBC to authorize the Village's sale of surplus water to energy companies so that such water could be used in natural gas development. Specifically, application was made to the SRBC for such withdrawals of surplus water and the

Village received permission in January, 2011, to sell such water in the amount of .50 million gallons per day (gpd) to Triana Energy LLC ("Triana") for natural gas exploration. Subsequently, SRBC gave the Village permission in April, 2011, to sell surplus water in the amount of .5 million gpd to SWEPI, LP, for the same use. Attached as Exhibit "A" hereto and which is also submitted as part of the record are the approvals issued by the SRBC for sale of surplus village water to Triana Energy and to SWEPI (*see* Ex. A). As a sale agreement with Triana Energy was never finalized, the surplus water slated for sale to Triana was transferred by SRBC to SWEPI.

14. Based upon applicable regulations, SRBC reviews such applications for the withdrawal of surplus water for use for natural gas exploration to ensure that there is adequate capacity in the aquifer from which the water is to be withdrawn. Further, SRBC is required to evaluate the impact of the withdrawal of such water under the circumstances throughout the area, including the impacts of such withdrawal throughout the Susquehanna River Basin, which encompasses portions of New York, Pennsylvania and Maryland. As such, through the application process, SRBC evaluated the potential impact of the withdrawal of water from the Village System as part of the SRBC application process.

15. When the Village undertook to review the proposal to sell surplus water to SWEPI, it worked with the Railroad to exhaustively study the impacts of the withdrawal of water slated for such sale. As more fully set forth in the Affidavit of Robert Drew, Hunt undertook a comprehensive study to evaluate whether the sale of surplus water could have any material negative impact on the Village System, including on users of it and it set forth the results of that analysis in a report dated November 11, 2011 (the "November 11, 2011 Hunt Report"). As can be seen from the November 11, 2011 Hunt Report, Hunt concluded after undertaking a comprehensive study that no

negative impacts to the Village Water Supply and the Village System would result from the sale of surplus water as proposed.

16. Further, as more fully set forth in the Affidavit of Robert Drew, while SRBC regulates the withdrawal of water from the aquifer at issue, the day to day operation of the Village System in Painted Post is regulated by NYSDOH. As required, NYSDOH's input was solicited during the permitting process associated with the construction and operation of the Transloading Facility. The Village sought and received approvals from NYSDOH to ensure that withdrawals associated with the sale of water to SWEPI were appropriate and met with all applicable requirements.

B. Funds Generated from the Sale of the Surplus Water will Allow the Village to make Needed Improvements to the Village Water System.

17. As reference in the Affidavit of Mayor Crozier, NYSDOH has requested that the Village make certain upgrades to its water system. Because of loss of tax revenue, including the loss of industry, the Village has been unable to undertake those improvements as it would like. With funds generated from the sale of surplus water to SWEPI, the Village will now be able to undertake those improvements.

18. If the Village was unable to sell such surplus water and generate revenues from same, it is doubtful whether needed repairs and upgrades to the water system can be undertaken in a reasonable manner, including avoiding potentially significant tax increases.

C. The Impact of One More Train a Day in the Village of Painted Post Associated with the Transloading Facility Will Not Adversely Impact Traffic or other Operations, and will Not Cause Excessive Noise or Other Problems.

19. The Petition claims that the operation of the Transloading Facility will result in adverse impacts including preventing residents of Chemung Street from accessing other portions of the Village including preventing them from accessing hospital and health care services.

Preliminarily, it should be pointed out that there are several other routes that can and are used by Village residents to travel eastbound or westbound through the Village, including from Chemung Street that do not require cars or pedestrians to travel over the rail line located on Chemung Street (*see* Ex. B).

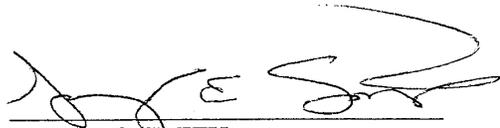
20. For example, if for any reason including motor vehicle traffic or other issues a resident of Chemung Street did not wish to or was not immediately able to travel across Chemung Street, such a person living on the south side of Chemung Street could travel in an easterly direction on Chemung street and take Interstate Route 417 to access other parts of the Village. Similarly, if a resident located on the north side of Chemung Street was unable to travel across it; such a resident could access other areas of the Village by travelling westerly on Chemung Street and access State Route 415 in either a westbound or eastbound direction to travel to other areas in the Village. There is no indication that utilization of other routes would result in significantly increased travel times to those living on Chemung Street seeking to travel to other areas of the Village or the surrounding area.

21. In addition, it is important to note that as a long time citizen of the Village and the area, there is no basis to any claim that operation of the Transloading Facility, which will result in the operation of but one additional train per day to transport and remove cars from the Transloading Facility will cause excess noise or undo air emissions. In sum, as stated, the Village has been the home to industrial operations for many years, and previously was the home for Ingersoll-Rand and is the current home for Dresser-Rand Industries. In the past trains have utilized the rail line located on Chemung Street and have done so for more than 50 years. In fact, throughout the history of the Village several additional rail lines bisected the Village and were utilized by industries and passengers, with an actual rail stop (depot) in the Village.

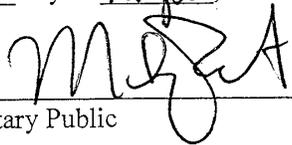
22. As such, under no circumstances will the operation of the Transloading Facility result in any significant change to the Village, including to the part of the Village where such facility is located. As indicated, the Village, including Chemung Street has been home to industrial facilities for years until the Ingersoll-Rand plant closed, as such, the operation of the Transloading Facility will not change the community in any way whatsoever. Indeed, when the Village was considering the operation of the Transloading Facility we identified rail as a preferred method to load water, as the usual manner in which this is done in the industry is with larger tanker trucks, and we wanted to avoid additional truck traffic which would have been associated with such an operation.

23. Further, as indicated, because of previous losses of tax revenue due to the closing and moving of businesses, the operation of the Transloading Facility will allow the Village not only make needed repairs to the Village Water System, but will also allow the Village to regain revenue which it needs to maintain public facilities and maintain public services.

WHEREFORE, it is respectfully requested that this Court grant Respondents' motion and dismiss the Petition in its entirety, together with such other and further relief as this Court shall deem just and proper.


LARRY E. SMITH

Sworn to before me this
1st day of August 2012.


Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Ontario County
Commission Expires May 10, 2014

EXHIBIT A –
SRBC APPROVALS
(REPRODUCED HEREIN AT PP. 328-334)

EXHIBIT B – MAP OF EAST CHEMUNG STREET

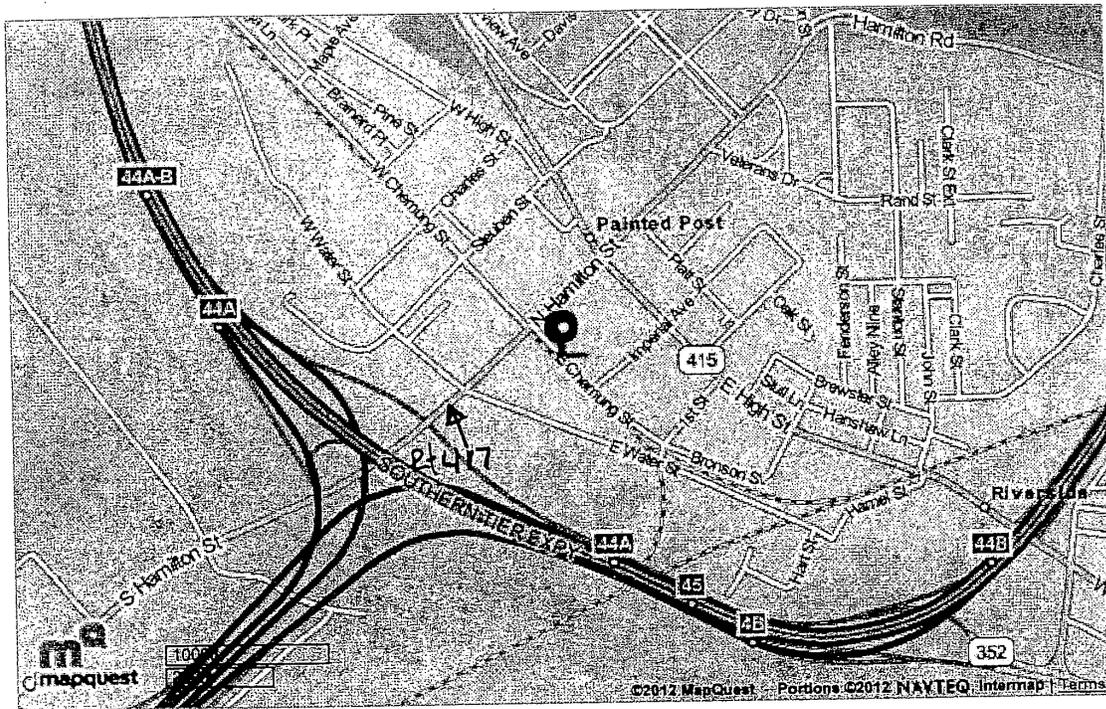
[1-99] E Chemung St, Painted Post, NY 14870 Directions, Location and Map | MapQuest Page 1 of 1

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Map of:
[1-99] E Chemung St
Painted Post, NY 14870

Notes

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**AFFIDAVIT OF ROBERT DREW, IN SUPPORT OF RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE
PETITION, SWORN TO ON AUGUST 1, 2012 [357-366]**

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
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COALITION TO PROTECT NEW YORK; JOHN
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Petitioners,

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RESPONDENTS' MOTION
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SUMMARY JUDGMENT,
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For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

Index No.: 2012-0810

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

ROBERT M. DREW, being duly sworn deposes and says:

1. I am a Principal with the firm of Hunt Engineers, Architects & Land Surveyors P.C. ("Hunt Engineers") and I submit this affidavit in support of Respondents' motion for summary judgment dismissing the Petition in all respects. The statements made in this affidavit are based upon my personal knowledge from working on the facility at issue, which I will refer to as the "Transloading Facility" located at 350 West Water Street in the Village of Painted Post New York ("the Village"). By way of background, I have my professional engineering license in New York and I belong to the New York State Flood Plain and Storm Water Managers' Association. I am fully familiar with all of the pertinent aspects of the Transloading Facility on which this affidavit is submitted based upon my work on that project over the last two years.

2. My affidavit will focus on several areas to correct the record in this matter, including certain incorrect statements made in the Petition. First, I will focus on the work performed by Hunt for Wellsboro & Corning Railroad LLC (“the Railroad”) concerning the Transloading Facility as well as the assistance Hunt provided to the Village and Painted Post Development LLC (“Painted Post Development”) collectively the Village and Painted Post Development may be referred to as “the Village”), in completing required reviews under applicable law including to the extent applicable under the New York State Environmental Quality Review Act (“SEQRA”) as well as assistance we provided in obtaining permits and approvals for the Transloading Facility.

3. Preliminarily, it must be noted that construction on the Transloading Facility has been completed in accordance with the schedule established previously, with it being completed before the Petition in this matter was provided to me or the entities which employed my firm in this matter. Construction started on April 27, 2012 and in accordance with the schedule the Transloading Facility was substantially complete by the start of the fourth week of July (attached as Exhibit “A “is the construction schedule dated May, 2012 providing that construction was to be substantially complete by July 23, 2012, we have enlarged the one part of the chart to show that completion date). The only remaining issues to be completed related to certain punch list items related to electrical connections, and similar non-substantive items.

A. Impacts Associated with the Operation Transloading Facility as well as the Sale of Surplus Water including any associated with withdrawal of water from the Village Water System and others Were Extensively Analyzed

4. As background, it is important to note that the Susquehanna River Basin Commission (“SRBC”) is charged with authorizing withdrawals of water from the aquifer at issue. As more fully set forth in the affidavit of Larry E. Smith, Superintendent of Public Works for the Village, the SRBC is responsible for approving withdrawals of water in the Susquehanna River Basin which

includes the aquifer from which the Village Water System draws its water, including any surplus water which will be sold by the Village.

5. As detailed in the SRBC documentation as well as additional correspondence provided by SRBC Manager Paula Ballaron, P.G., in reviewing and approving the sale of surplus water by the Village, SRBC specifically reviewed whether there was sufficient excess capacity associated with the aquifer to support the requested bulk sale among other considerations. Further, as detailed in SRBC's correspondence, SRBC also coordinated with the New York State Department of Environmental Conservation in reviewing the Village's application. It should be noted that as stated the Susquehanna River Basin Commission is not a municipality or a state agency.

6. As such, in reviewing actions associated with the construction and operation of Transloading Facility, Hunt was not requested, nor would it have been appropriate for Hunt to review impacts from the sale of surplus water under the circumstances to other geographic areas, as the Susquehanna River Basin Commission had already made that determination and had already approved same. Hunt was directly involved with obtaining required permits from the New York State Department of Health (NYSDOH) the New York State Department of Environmental Conservation ("DEC") and another local agency as appropriate to construct the Transloading Facility. In that regard, Hunt assisted the Village as well as the Railroad in coordinating and obtaining necessary permits needed so as to allow for water to be withdrawn and transferred onto train cars at the Transloading Facility site.

7. Hunt also assisted in sending out notice and coordination letters to various agencies including to DEC and NYSDOH as part of the New York State Environmental Quality Review Act (SEQRA) process in which the Village engaged. Further, Hunt was involved in obtaining permits from those agencies including to DEC to insure storm water controls were in place and acceptable,

as well as to the NYSDOH for back flow preventers and other permits needed at the Transloading Facility site. Copies of pertinent correspondence are attached hereto as Exhibit A, and they are also included in the administrative record in this matter.

B. The Transloading Facility Has Received Any Permits and Authorizations Required

8. At each turn, the Village and the Railroad as appropriate, received any permits appropriate to operate the Transloading Facility and to withdraw water from the Village Water System so as to allow for the sale of surplus water to SWEPI, LP. In fact, the Transloading Facility, as previously publicized in meetings and in the newspaper has been completed. The permits issued and authorizations sought included the filing of a notice of intent with the DEC as part of the permit needed for Transloading Facility Site under the New York State Pollutant Discharge Elimination System Program (SPDES) for stormwater discharges (the "SPDES Permit"). Hunt filed for and received protection under the SPDES Permit for the Transloading Facility Site before construction was initiated.

9. It should be noted that several months after Hunt received the SPDES Permit for the Site, it filed a supplement to that permit seeking authorization to disturb areas larger than 5 acres at a time. Subsequent to the filing of that request with DEC, there was an inspection at the Transloading Site by DEC, and approximately 10 days after that inspection, on July 23, 2012, a stop work order notice letter was transmitted to me directing that construction work cease. The stop work notice indicated that it was issued primarily because DEC contended that under the SPDES permit, the Railroad should have obtained a letter from the State Office of Parks Recreation and Historic Preservation acknowledging that developing the Site would not impact archeological resources (other minor issues were noted, but were disputed and did not appear to be the basis for the stop work notice). As discussed above, by the time we received the stop work notice, construction on the

Site was completed. We did not seek a letter from SHPO concerning such resources at the Site, because of previous disturbances on it associated with decades of industrial operations, previous investigations of it, and because the Site is the subject of a land use control. We have already preliminarily conferred with a SHPO representative, who indicated he was inclined to agree with our approach. In addition, we have provided DEC with our position in writing as to why no violations occurred and no letter from SHPO is required, and while the construction to which the stop work notice was directed had already been completed, and as such any stop work notice is without affect, we have nonetheless requested that DEC rescind it, as in our view it was issued in error even if it had no effect.

10. In any event, in addition to informing the applicable state and local regulatory agencies of the Transloading Facility proposed construction and operation and seeking their input as well as obtaining each appropriate authorizations and/or permits for same, Hunt also at the insistence of the Railroad and the Village undertook an extensive study to insure that the withdrawals associated with the sale of surplus water would not have adverse impacts on the Village Water System and its users. As detailed in the November 11, 2011 prepared by Hunt entitled "Draft Engineering Report for the Wellsboro & Corning Railroad Painted Post Trans Loading Facility Village of Painted Post Steuben County New York" ("November 11, 2011 Hunt Report"). Hunt undertook among other studies and analyses, a modeling study of the entire Village Water System using a computer software program. In order to assess the withdrawal of water from the Village Water System so as to support the transfers of the surplus water contemplated under the agreement at issue, the model assumed a demand of 1,000 gallons per minute even though in many instances it is unlikely that 1,000 gallons per minute would be withdrawn under the circumstances here for conveyance for transfer to the Railroad. In any event, the results of the extensive modeling

undertaken demonstrate there would be no material impact on water pressures throughout the Village from such withdrawals and such withdrawals will not have a significant negative effect on the system.

C. The EAF Was Completed and Used to Evaluate Impacts As Required

11. It is also worth noting that we assisted the Village in completing the full environmental assessment form (EAF) and specifically Parts 1 and 2 of it for the Transloading Facility. The Petition takes issue with a number of the responses located on Part 1 and Part 2 of the EAF, and as Hunt assisted in that process, I wanted to provide some additional information regarding the nature of the responses in it. Further, it is important to note that the Village undertook the requisite review applicable, and that the EAF was completed in a sufficient manner under the circumstances.

12. The Petition claims the EAF contained errors, for example it claims that it was error to not identify the aquifer from which the withdrawals are proposed to take place as a primary aquifer, but as indicated previously, those issues were in fact considered by SRBC, as it is SRBC's regulatory role to determine whether such withdrawals from the aquifer at issue are appropriate and whether the aquifer can support same. In any event, failing to identify the primary aquifer had no impact on the Village's review or in Hunt assisting the Village in this regard. The Village considered the SRBC approvals when it undertook its review and issued its resolution.

13. In addition, the Petition criticizes the failure to consider Railroad cars as vehicular trips under the EAF. First, I will say that in the past that I am unaware of railroad cars being considered vehicular trips for purposes of the EAF; in any event, I am told that railroad operations are subject to other laws including other federal law and therefore, are not evaluated under SEQRA. In any event, in my conversations with Railroad representatives, based upon their experience with

rail operations, we determined that given that the Transloading Facility operation would add but one single train a day to an already existing rail line and already established interchange, this would not have an impact of any kind, let alone a significant impact. In addition, the Petition criticizes the failure to consider that there are residential areas "adjacent to" the site for the location of the Transloading Facility. I am not sure where this criticism comes from, since the former Ingersoll Rand site on which the Transloading Facility is located is zoned industrial and from reviewing the documents it fully appears it has been the location of industrial uses for decades. Similarly, complaints about noise and air quality relating to Railroad Operations again appear to relate not to SEQRA, but to other regulations and law which concern rail operations. In any event, we did consider and review issues concerning noise and air quality, and again because the addition of one single train a day (of approximately 42 cars), with but two locomotives, we concluded that it would not have any significant impact based upon past rail operations and current rail operations in the Village. Further, based upon the construction of the Transloading Facility, we did not believe that there would be any adverse noise impacts because the rail operations are similar to those that occur now in the Village, and because there is no excessive noise associated with the operation as it simply involves the filling of railroad cars with water.

D. There Have Been Extensive Investigations and Remediation Measures Implemented at the Former Ingersoll Rand Site, and Based on those and DEC's De-listing of the Site, There is No Basis for any Environmental concern associated with the Operation of the Transloading Facility.

14. The Petition also alleges that the use of the former Ingersoll-Rand site for the Transloading Facility may result in contamination to the aquifer from which withdrawals are slated to be made. Based on SRBC's authorization of the withdrawal, as well as the extensive investigations and remedial actions taken at the former Ingersoll-Rand site, we do not believe there is any basis that has been identified for the claim that contamination would result from the

withdrawals associated with the Transloading Facility. As detailed in the Administrative Record, due to past industrial operations at the former Ingersoll Rand site, it was listed on the State of New York's inactive hazardous waste site list, but due to extensive testing and remediation, DEC determined that the former Ingersoll-Rand site should be removed from such waste site list, based on DEC's careful review of the remediation undertaken under its auspices and its conclusion that due to the remediation completed, there are no environmental concerns associated with the Site..

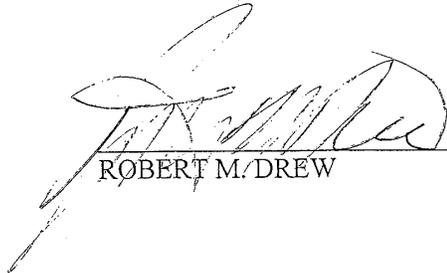
15. Indeed, as set forth in detail in the November 11, 2011 Hunt Report, the former Ingersoll Rand site has been subject to extensive investigation and remediation activities. In fact, as detailed in such report, following completion of exhaustive investigations and remediation measures at such site, the DEC specifically found in delisting the site that "the contamination identified at the [disposal] site has been properly remediated" and in delisting the site the DEC found that: "no environmental problems associated with the disposal of hazardous waste remain at the site."

16. The Petition goes on to identify a certain area on the Site where potential compounds remain, but as detailed in the November 11, 2011 Hunt Report as well as in other documents comprising the administrative record, Hunt undertook coordination with DEC to implement measures (which is indicated and now been constructed) to prevent any storm water loss or other loss from the site that would cause adverse drainage conditions or any other adverse conditions. In particular, the site is covered by a Storm Water Pollution Prevention Plan ("SWPPP") as well as being subject to a Soil Fill Management Plan ("SMP") that's specifically designed for the former Ingersoll Rand site; the SWPPP and the SMP specifically address various earth disturbing activities and require that specific procedures be implemented to insure run-off does not occur and that any potential for stormwater discharges to affect the environment are eliminated or minimized. In any

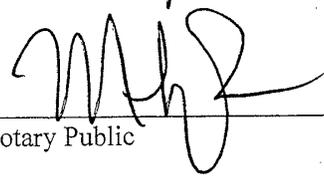
event no restriction by NYSDEC or NYSDOH was placed on the use of existing water line connections on the former Ingersoll Rand to withdraw water from the Village System.

17. In addition, it should be pointed out that during construction, the general contractor that undertook the work on behalf of the Railroad hired an independent firm to complete extensive onsite daily testing of the soil and air born particles during the earth movement operations. In all, the testing firm, ERM, collected numerous samples during the earth movement operation. Each soil sample was sent to a NYDOH approved laboratory for testing of Volatiles, semivolatiles, pesticides, PCBS, metals and inorganics. All testing was in conformance to the detailed instruction of the soil management plan. Testing results and the Soil Management Plan have indicated that the former Ingersoll Rand site does not contain contaminants of concern, including those areas where the equipment associated with the Trans Loading Facility was constructed.

WHEREFORE, it is respectfully requested that this Court grant Respondents' motion and dismiss the Petition in its entirety, together with such other and further relief as this Court shall deem just and proper.


ROBERT M. DREW

Sworn to before me this
1st day of August, 2012.


Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Ontario County
Commission Expires May 10, 2016

EXHIBIT A – CONSTRUCTION SCHEDULE [367- 368]

123	Area Light Poles	0% 4 days	Mon 6/25/12	Thu 6/28/12
124	Prep Form Pour Electrical Pads	100% 5 days	Fri 6/22/12	Wed 6/27/12
125	Prep, Form, Pour, Cure Sidewalks	100% 7 days	Sat 7/7/12	Sat 7/14/12
126	Fencing Demo & Install New	85% 14 days	Tue 6/26/12	Wed 7/11/12
127	Site Finishes	42% 44 days	Tue 6/19/12	Wed 8/8/12
128	Topsoiling	95% 7 days	Tue 6/19/12	Tue 6/26/12
129	Hydroseeding	80% 2 days	Wed 6/27/12	Thu 6/28/12
130	Bioretention Soils	100% 3 days	Wed 6/27/12	Fri 6/29/12
131	Subcontract Plantings	100% 14 days	Wed 6/27/12	Thu 7/12/12
132	Substantial Completion	0% 1 day	Mon 7/23/12	Mon 7/23/12
133	Turf Maintenance	0% 6.6 wks	Mon 7/2/12	Wed 8/8/12
134	Remove Silt Fence & Inlet Protection	0% 2 days	Sat 7/28/12	Mon 7/30/12

**AFFIDAVIT OF ANNE NAMES, IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS
AND/OR FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE PETITION, SWORN
TO ON AUGUST 1, 2012 [369-371]**

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

AFFIDAVIT IN SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT,
AND IN OPPOSITION TO
THE PETITION

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

Index No.: 2012-0810

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

ANNE NAMES, being duly sworn deposes and says:

1. I am the Clerk-Treasurer for the Village of Painted Post New York (the "Village") and I have held this position since 2010, prior to that time I served as the Village's Deputy Clerk beginning in 2008. I submit this affidavit in support of Respondents' motion to dismiss and/or for summary judgment, and in opposition to the Petition. The statements in this affidavit are based upon my knowledge, including my direct knowledge of the matters set forth herein and my review of pertinent documents including those submitted as part of the Administrative Record in this matter.

2. On February 23, 2012, pursuant to a meeting of the Board of Trustees for Village of Painted Post, I duly filed the following documents in the Village Clerk's Office in Painted Post New York located at 261 Steuben Street, Painted Post, New York 14870 including:

i. Resolution Negative Declaration-Village of Painted Post Lease by Painted Post Development LLC; and

ii. Resolution of the Village of Painted Post for the Proposed Surplus Water Supply Agreement.

3. Each of the foregoing documents was filed in accordance with applicable law on February 23, 2012. As such each of the resolutions was in full effect on and authorized on February 23, 2012.

4. The February 23, 2012 Village Board of Trustees meeting by which the foregoing resolutions were enacted and filed was lawfully noticed in accordance with applicable law.

WHEREFORE, it is respectfully requested that this Court grant Respondents' motion and dismiss the Petition in its entirety, together with such other and further relief as this Court shall deem just and proper.

Anne Names
ANNE NAMES

Sworn to before me
this 1st day of August, 2012.

MJP
Notary Public

MUNESH PATEL
Notary Public, State of New York
No. 02PA6109397
Qualified in Ontario County 10
Commission Expires May 10, 2010

**AFFIDAVIT OF WILLIAM GOUGH, IN SUPPORT OF RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE
PETITION, SWORN TO ON AUGUST 1, 2012 [372- 375]**

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT,
AND IN OPPOSITION TO
THE PETITION

Index No.: 2012-0810

STATE OF PENNSYLVANIA)
COUNTY OF CRAWFORD) ss.:

WILLIAM R. GOUGH, being duly sworn deposes and says:

1. I am a professional Geologist, licensed in Pennsylvania and I have been employed by Moody & Associates, Inc. since 1973 as a consulting geologist. During my career I have first-hand knowledge and experience with numerous groundwater projects in the Chemung River Basin, including in Painted Post, New York, as well as other municipalities in that area including in the Town of Erwin, in the City of Corning, New York, as well as in the City of Elmira. As such, based on my experience with those projects, I have first-hand knowledge of the geology associated with the matters raised in the Petition including the aquifer at issue. I have also worked with numerous industries in the area that use and rely on groundwater as a water supply source. I am also familiar

with the requirements of the Susquehanna River Basin Commission (“SRBC”) for permitting and the use of sources within the Susquehanna River Basin.

2. I have reviewed the Petition in this matter and certain other documents including some of those referenced in the Petition, and I provide the following comments and responses that are pertinent to this matter. My affidavit is based upon my review of the matters set forth in the Petition and my experience, including my knowledge of the Village of Painted Post water distribution system on which my firm has performed services in the past and my personal knowledge of such system, as well as my knowledge of the geology at issue including the aquifers referenced based on my experience as referenced above.

3. As background, there have been extensive geological and groundwater study of the water resources in the area of the Village of Painted Post (the “Village”) over the last several decades by numerous federal, state and local agencies as well as consultants, including as referenced in certain reports identified in the Petition. The unconsolidated glacial aquifer into which the Village wells are drilled and produced from is often referred to as the “Corning Aquifer.” This aquifer is one of the most prolific in the State of New York. My firm, Moody & Associates, Inc. including myself, have provided service on the water wells used by the Village of Painted Post. Our records and my first-hand knowledge of the well characteristics and yields from the Village wells confirm that Wells No. 2, 3 and 4 are prolific producing wells with high yields. Well No. 1 is not in service and has not been for some time.

4. Wells 2, 3 and 4 have yields documented through the years of service and use that show that on average they produce an average of less than 20% of such wells’ permitted capacity. Each of the referenced Village wells is permitted in accordance with applicable regulations,

including in accordance with laws and regulations in the State of New York. The combined permitted capacity of the Village wells is in excess of 4,000,000 gallons per day.

5. Existing geological and water resource reports, including some referenced in the Petition document the use and withdrawal of groundwater in the Corning area. These reports indicate that the total overall average daily withdrawal rates in Corning are approximately one-half of such aquifer's sustainable yield even during a severe drought.

6. Furthermore, it should be noted that the Susquehanna River Basin Commission provides rigorous permitting requirements and regulation of all water use throughout the Susquehanna River Basin, which includes the Village. The water withdrawal associated with the Village of Painted Post is regulated by SRBC. As discussed in other papers being submitted, the SRBC has approved sale of up to 1,000,000 gallons per day of surplus water by the Village of Painted Post to SWEPI, LP, but such surplus water sale will be based on the water needs of Village inhabitants, and as such, such sales may be curtailed or lessened depending on the availability of surplus water to be sold by the Village. Indeed, the SRBC dictates curtailments and restrictions of water use in the event of a declared drought and other conditions, and as such, regulates water use to maintain adequate water supply for essential uses in the Susquehanna River Basin.

7. Regarding the former Ingersoll Rand Foundry property on which the Transloading Site is located, such former Foundry was previously identified as an inactive hazardous waste site, but it has been extensively investigated and remediated under the auspices of the New York State Department of Environmental Conservation ("NYSDEC"). After successful remediation of the former Ingersoll Rand Foundry property was completed, and NYSDEC certified that such property did not pose a concern for environmental contamination. As a result, there is simply no basis to any contention that the former Ingersoll Rand Foundry property is a threat to the Corning Aquifer based

upon increased water withdrawals from the Village of Painted Post wells associated with the sale of surplus water.

William R. Gough

WILLIAM R. GOUGH

Sworn to before me
this 1 day of August, 2012.

Vicki L. Frazier
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Vicki L. Frazier, Notary Public
City of Meadville, Crawford County
My Commission Expires March 29, 2016
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

**AFFIDAVIT OF WILLIAM MYLES, IN SUPPORT OF RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE
PETITION, SWORN TO ON AUGUST 2, 2012 [376-379]**

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

AFFIDAVIT IN SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT,
AND IN OPPOSITION TO
THE PETITION

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

Index No.: 2012-0810

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF FLORIDA)
COUNTY OF DUVAL) ss.:

WILLIAM MYLES, being duly sworn and deposes and says:

1. I am the Vice President of Operations for Respondent, the Wellsboro & Corning Railroad, LLC ("the Railroad") and I have held this position since January of 2008. I have worked in railroad operations for the last 12 years, including supervising operations for rail yards located in Pennsylvania and in other locations. I submit this affidavit in support of the motion filed on behalf of the Respondents for summary judgment dismissing the Petition. The statements made in this affidavit are based upon my personal knowledge, including my experience in railroad operations and my review of applicable documents including those submitted as part of the Administrative Record in this matter.

2. Based on my responsibilities in my capacity as Vice President of Operations, I am fully familiar with the lease the Railroad entered into with Painted Post Development LLC to operate the Transloading Facility located in the Village of Painted Post (the "Village") at 450 West Water Street (the "Lease") whereby surplus water will be loaded onto rail cars for transport to Pennsylvania. The Petition makes several allegations concerning the Transloading Facility operation and the Lease which are simply not true. For example, the Petition claims in sum and substance that operation of the Transloading Facility will result in significant increases to already existing train traffic in the Village, but that is simply not so. In fact, the only rail traffic associated with operation of the Transloading Facility is a single train that will operate once a day and will travel along the rail line located on Chemung Street to a pre-existing designated interchange point located adjacent the Transloading Facility. In sum, each day a single train comprised of 42 empty cars will travel to the Transloading Facility where each car will be moved to an individual loading station located on the siding where it will be automatically filled and the 42 cars that have been filled the previous day will be removed and then travel to a site located in the Wellsboro, Pennsylvania.

3. Further, there will be no significant periods of idling by the locomotives used for this single daily rail operation, and in fact, we anticipate that the two locomotives will spend no more than two hours per day within the Village. Specifically, the two locomotives to be used for the Transloading Facility operation will travel from Wellsboro, Pennsylvania, deliver the 42 empty cars and retrieve the full cars that will be transported to Pennsylvania. As such, any emissions from the locomotives that would potentially impact the Village will be negligible.

4. Further, based upon my experience in rail operations, and the fact that I know from my position with the Railroad that the rail line in the Village has been in use for decades, the addition of one of a single train per day under these circumstances to the existing rail traffic will

contribute negligible increases in emissions even when other rail operations are considered. The Petition also claims that motor vehicle traffic will be adversely affected by the Transloading Facility's operations, but the Railroad will avoid to the extent possible, undertaking this single operation and movement to those portions of the day where vehicular traffic is not anticipated to be at its highest levels.

5. Further, based upon my experience and knowledge of railroad operations including operations by the Railroad, significant noise is not expected from the operations associated with the Transloading Facility. In short, as set forth in detail in the documents associated with this matter including in the record, the activities associated with the Transloading Facility will be limited to filling rail cars with surplus water and the once per day changing out of the empty cars with the full ones. The filling of such cars will have no significant noise impact associated with it, as the existing Village of Painted Post pumps associated with the water will be off-site and, noise associated with them will not be at the Transloading Facility. Further, movement of the rail cars to be used whether empty or full will not have any more noise associated with such operations than the noise associated with other rail operations which are already taking place in the Village, including those associated with rail operations for Dresser Rand. Moreover, there is simply no basis for any allegation that the rail operations associated with the Transloading Facility will interfere with pre-existing rail operations in the Village.

6. There are also incorrect statements made in the Petition about the building of new rail lines for facilities. Rather than building any new rail lines, the Railroad will use the existing rail line in the Village at the former Ingersoll Rand Site. The only equipment or facilities that were constructed as part of the Transloading Facility are a simple siding and some essentially above ground piping to allow the water from existing pipes to be conveyed onto the rail cars as well as

automated metering equipment and facilities to facilitate the pumping of surplus water into rail cars. No additional rail lines have been laid or will be laid for the Transloading Facility.

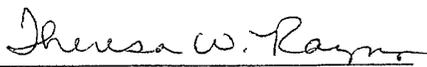
7. Further, this will also confirm my understanding that the Railroad is not required to obtain any permits for the Transloading Facility or associated operations from the Federal Railroad Administration, from the Surface Transportation Board, or from any other federal agency. Because the Railroad will be using an existing rail served facility on an existing rail line, there is and was no need for the Railroad to apply for or any authorization or permit to operate and serve the Transloading Facility.

8. There are also allegations made in the Petition regarding the location in Pennsylvania to which the surplus water from the Village will be taken. The location to which the Village's surplus water will be transported is in Wellsboro Pennsylvania, and while that location does not have anything to do with this matter, I nevertheless wanted to respond because of inaccuracies contained in such allegations. In fact, the site to which the water from the Village will be taken in Pennsylvania contains several large holding tanks where water is stored and is available for use; there is no basis to the allegation that the facility in Pennsylvania to which the surplus water will be taken will result in any problems or significant adverse effects. Indeed, the facility located in Wellsboro Pennsylvania was constructed and is operated in accordance with applicable law.

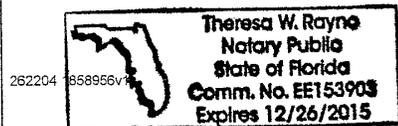


William Myles

Sworn to before me this
2nd day of August, 2012



Notary Public



VERIFIED ANSWER AND OBJECTIONS IN POINT OF LAW OF WELLSBORO AND CORNING RAILROAD, DATED SEPTEMBER 11, 2012 [380-406]

1886525

**SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN**

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

**VERIFIED ANSWER AND
OBJECTIONS IN POINT
OF LAW OF
RESPONDENT
WELLSBORO AND
CORNING RAILROAD,
LLC**

Index No.: 2012-0810

Respondent, Wellsboro and Corning Railroad, LLC (hereinafter "WCOR") through its attorneys, Capehart & Scatchard, P.A. for its Verified Answer to the Verified Petition ("Petition") state and allege as follows:

1. WCOR admits to those allegations in paragraph 1 of the Petition to the extent they allege that the proceeding is styled an Article 78 proceeding, and admits that certain relief is sought as set forth in the Petition. Respondent WCOR denies that it has not fully complied with applicable State and Federal laws regarding the construction and operation of its new rail transloading facility located in the Village of Painted Post, New York (hereinafter "Village").

2. As to the allegations contained in paragraph 2 of the Petition, WCOR denies that the Sierra Club or Sierra Club members will be adversely affected; denies that drinking water supplies may be contaminated; denies the allegations regarding increases in traffic and each of the other allegations concerning other alleged adverse affects identified therein, including

adverse affects concerning noise, air contamination and the like, and such allegations regarding the Village of Painted Post and Wellsboro, Pennsylvania; denies the allegations regarding truck traffic; denies knowledge or information sufficient to form a belief as to the truth and falsity of the allegations concerning the state of the incorporation of the Sierra Club, as well as allegations regarding its membership and activities its membership has allegedly been involved in; denies knowledge and information sufficient to form a belief as to the truth and falsity of the allegation as to the number of members who claim to live in the Village of Painted Post or in Pennsylvania; and denies the remaining allegations contained therein.

3. As to the allegations contained in paragraph 3 of the Petition, WCOR denies that members of "People for a Healthy Environment" may be adversely affected as alleged therein; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the state of incorporation of the referenced organization, its goals and allegations regarding its focus; and denies the remaining allegations contained therein.

4. As to the allegations contained in paragraph 4 of the Petition, WCOR denies that the members as alleged may be adversely effected as identified therein; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning "Coalition to Protect New York," including denying knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to the groups purportedly represented by same, as well as the goals such organization or organizations seeks to promote or oppose; and denies the remaining allegations contained therein.

5. As to the allegations contained in paragraphs 5, 6, 7 and 8 of the Petition, WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the residence of the Petitioners identified, including John Marvin, Therese

Finneran and Michael Finneran, Virginia Hauff, and Jean Wosinski; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to how long such persons have lived at the residence identified; denies the allegations contained in said paragraphs regarding alleged adverse affects, including alleged affects from rail traffic, increase noise and air contamination, as well as adverse affects to drinking water quality and any adverse affects on the health of the persons alleged therein, including their spouses and others; denies that the referenced individuals will be adversely impacted by any rail operations, including any adverse impacts to health due to the rail operations; denies adverse impacts from automobile traffic due to rail operations; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the educational background or employment background of Petitioner, Jean Wosinski, but admits that Ms. Wosinski attended more than one meeting; and denies knowledge or information sufficient to form a belief as to whether Ms. Wosinski objected to the actions at issue in this matter at any of the meetings or otherwise.

6. As to the allegations contained in paragraph 9 of the Petition, WCOR admits that the Village of Painted Post is an incorporated village, located within Steuben County, New York; and as to the characterization of the location of the Village concerning various rivers and other topography, refer the Court to available maps and other information regarding the area, and state that the Village undertakes its responsibilities as required under law and has done so at all times.

7. As to the allegations contained in paragraph 10 of the Petition, WCOR admits that SWEPI, LP is a limited liability partnership formed in the State of Texas, and states that it conducts certain business activities associated with oil and/or gas exploration; denies the characterization of the nature of the operations in which SWEPI engages; denies knowledge or information sufficient to form a belief as to why Petitioners made SWEPI a party herein; as to the

allegations regarding SWEPI's execution of an agreement to purchase certain surplus goods or services from the Village of Painted Post, refer the Court to the referenced purchase agreement which is submitted as part of the Administrative Record (and is hereinafter referred to as the "Surplus Agreement"); and denies knowledge or information sufficient to form a believe as to the truth or falsity of the remaining allegations contained therein.

8. As to the allegations contained in paragraph 11 of the Petition, WCOR admits it is a federally chartered railroad operating between Corning, NY and Wellsboro, PA and that it is headquartered in Exton, PA. WCOR admits that it has agreed to carry the water at issue in this matter and has leased land from the Village of Painted Post and built a rail loading facility to load the rail cars. WCOR's agreement to carry this water is based upon its federal common carrier obligation to transport freight at the request of a shipper.

9. As to the allegations contained in paragraph 12 of the Petition, WCOR admits that Painted Post Development, LLC is a limited liability development company; admits that the Village of Painted Post is its sole member; and as to allegations regarding Painted Post Development's relationship with the Railroad, refer the Court to a certain lease agreement executed by Painted Post Development and the Railroad (the "Lease"), which is submitted as part of the Administrative Record (which has been filed with the Court by defendant Village of Painted Post, for its true and accurate contents; and denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained therein, including Petitioners' rationale for making Painted Post Development a party in this proceeding.

10. As to the allegations contained in paragraph 13 of the Petition, WCOR admits that as required under applicable law, the Village provided notice to agencies and was installed as the lead agency; denies knowledge or information sufficient to form a belief as to the truth or falsity

of the remaining allegations contained therein; and refers the Court to the Administrative Record, which sets forth in detail the actual record of the proceedings referenced therein, including notices sent, resolutions enacted, and other matters.

11. As to the allegations in paragraph 14 of the Petition, as more fully set forth in the Administrative Record, together with the Affidavits submitted herewith, the Board of Trustees on behalf of the Village of Painted Post, voted on and adopted certain resolutions on February 23, 2012, and such resolutions were filed in accordance with law; and WCOR denies the remaining allegations contained therein.

12. As to the allegations contained in paragraph 15 of the Petition, WCOR refers the Court to the resolutions at issue enacted by the Village for their true and accurate contents, including the nature of findings issued by the Village by the Board of Trustees on behalf of the Village (the Village and the Village Board of Trustees may be referred to hereinafter collectively as the "Village"), and denies knowledge or information sufficient to form a belief as to the allegations contained therein, including any attempt to characterize the resolutions adopted including the negative declaration resolution adopted therein as such documents speak for themselves, which documents are submitted as part of the Administrative Record.

13. As to the allegations contained in paragraph 16 of the Petition, WCOR denies knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations in this paragraph.

14. As to the allegations contained in paragraph 17 of the Petition, WCOR denies that the Village failed to undertake the requisite analysis, including taking a hard look at potential adverse environmental impacts as required under applicable law; denies that the Village was required to examine impacts concerning water supplies and other matters concerning areas

located in and around Wellsboro, Pennsylvania; and denies the remaining allegations contained therein.

15. As to the allegations contained in paragraph 18 of the Petition, WCOR denies that the Village exempted itself from any requirements under New York law, and refers the Court to the actual resolution itself and the underlying documents upon which it was based, which are submitted as part of the Administrative Record, for their true and accurate contents, as such documents speak for themselves; and denies the remaining allegations contained therein. WCOR denies that ICCTA, which governs railroad facilities, includes the Federal Railway Safety Act which is a separate and distinct statute. WCOR also denies that the federal laws cited in this paragraph require that WCOR or any other defendant is required to make application under said federal laws to construct and operate a water transload facility.

16. As to the allegations contained in paragraph 19 of the Petition, WCOR denies the Petition's characterization of the Village's findings regarding the Interstate Commerce Clause Termination Act ("ICCTA"); denies the remaining allegations regarding alleged contamination concerns therein; and denies the remaining allegations contained therein. Defendant WCOR contends that exclusive jurisdiction regarding all railroad facilities lies with the Surface Transportation Board pursuant to the ICCTA.

17. As to the allegations contained in paragraph 20 of the Petition, WCOR denies that it is required to obtain any permits or authorizations from the Surface Transportation Board or the Federal Railroad Administration; denies that the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. applies under any circumstances to the actions at issue; and denies the remaining allegations contained therein.

18. As to the allegations contained in paragraph 21 of the Petition, WCOR denies the allegations contained therein, and states that by enacting a resolution and considering the type of action associated with the action at issue, the Village, in fact, undertook the required review; and as to the allegations concerning the contents of the regulations at issue, including 6 N.Y.C.R.R. 617.5(c)(25), refers the Court to the specific regulation therein for its true and accurate contents, as such regulation speaks for itself; and denies the remaining allegations contained therein.

19. As to the allegations contained in paragraph 22 of the Petition, WCOR denies the allegation that the contract at issue concerned the ownership of land, and states that the contract at issue is the Surplus Agreement, which addresses the sale of certain surplus water under certain conditions; refers the Court to the Surplus Agreement, which is submitted as part of the Administrative Record, for its true and accurate contents; and denies the remaining allegations contained therein.

20. WCOR denies the allegations contained in paragraph 23 of the Petition, and specifically denies that any segmentation occurred.

21. As to the allegations contained in paragraphs 24 and 25 of the Petition, WCOR admits that the Village Board of Trustees voted upon and approved on February 23, 2012 a resolution that was filed on that date concerning the Village's sale of certain surplus water; admits a resolution was voted upon and approved by the Village Board of Trustees and was filed on February 23 concerning the Lease by Painted Post Development, and refers the Court to those documents, which are submitted as part of the Administrative Record, for their true and accurate contents; and denies the remaining allegations contained therein.

22. WCOR denies the allegations in paragraph 26 of the Petition, and states as provided for in the applicable resolutions that the Mayor of the Village was authorized by such

resolutions to execute various agreements; and further states that the resolutions at issue were fully implemented and approved and filed on February 23, 2012.

23. As to the allegations contained in paragraphs 27 and 28 of the Petition, WCOR admits that the Mayor of the Village executed an agreement between the Village and SWEPI, whereby the Village under certain circumstances would sell surplus water to SWEPI, subject to the various provisions and caveats stated therein, including among other conditions that there is adequate surplus water to so supply SWEPI, and other conditions satisfied as more fully set forth in the Surplus Agreement; refers the Court to the Surplus Agreement, which is submitted as part of the Administrative Record, for its true and accurate contents; as to the allegations contained in paragraph 28, WCOR admits that a lease was executed as between Painted Post Development and WCOR and refers the Court to the provisions of Lease, which is submitted as part of the Administrative Record, for its true and accurate contents; and denies the remaining allegations contained therein, including any attempt to characterize the area where the project at issue was built, and further states that such area is specifically zoned industrial.

24. As to the allegations contained in paragraph 29 of the Petition, WCOR states that the circumstances surrounding the execution of the referenced documents, which are submitted as part of the Administrative Record, including the Surplus Agreement and the Lease, speak for themselves; and denies the allegations contained in paragraph 29, including any characterization or selective quotation from the agreements at issue.

25. WCOR denies the allegations contained in paragraph 30 of the Petition, and states that the Village resolution issuing a negative declaration was voted on, adopted and filed on February 23, 2012 in accordance with applicable law, and states that any additional notice

provided to various agencies does not alter the fact that the negative declaration issued by the Village was issued and became effective on February 23, 2012.

26. As to the allegations contained in paragraph 31 of the Petition, WCOR admits that certain facilities and improvements have been constructed on the premises subject to the Lease (hereinafter the "Transloading Facility"); refers the Court to the Lease, which is submitted as part of the Administrative Record, for its true and accurate contents; and admits that the premises on which the Transloading Facility is located will allow for the loading of 42 rail cars.

27. As to the allegations contained in paragraph 32 of the Petition, WCOR refers the Court to the November 2011 Report prepared by Hunt Engineers, Architects and Land Surveyors, P.C., entitled Engineering Report for the Wellsboro & Corning Railroad, Painted Post Transloading Facility (the "Hunt Report"), which is submitted as part of the Administrative Record, for its true and accurate contents; states that the Hunt Report contains among information, specifics concerning the equipment and facilities constructed on the premises on which the Transloading Facility is located; and denies the remaining allegations contained therein.

28. As to the allegations contained in paragraph 33 of the Petition, WCOR denies that there is any plan to remove 42 loaded rail cars every 16 hours, and denies the remaining allegations contained therein.

29. As to the allegations contained in paragraphs 34 and 35 of the Petition, WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of the calculations therein, including what Petitioners contend is the weight of a gallon of water or the weight of the rail cars; denies that significant noise will result from coupling or uncoupling of rail cars; denies that diesel engines will be running such as to cause any significant noise impacts;

denies remaining allegations contained therein; and states and admits that even if the weight of each tank car is 192,769 pounds, this weight is below the maximum weight of the tank cars to be used as permitted by federal regulations.

30. WCOR denies the allegations contained in paragraph 36 of the Petition, and states that the Village undertook an appropriate review of the project at issue, including the operations associated with the premises which is the subject of the Lease.

31. As to the allegations contained in paragraph 37 of the petition WCOR denies the allegation that it may take more than one locomotive to haul 42 cars.

32. As to the allegations contained in paragraph 38 of the Petition, WCOR respectfully refers the Court to the actual text of the website identified, and denies that same applies or is relevant to the matters associated with the actions at issue.

33. As to the allegations contained in paragraph 39 of the Petition, WCOR states that the Village undertook appropriate consideration of operations associated with the actions at issue; denies that the Village failed to take into account potential impacts from the operation of the transloading facility at the premises which is the subject of the Lease; and denies the remaining allegations contained therein.

34. As to the allegations contained in paragraphs 40 and 41 of the Petition, WCOR denies the characterization as to where rail cars will “enter and exit;” denies the allegations as to what constitutes “the center of the Village;” denies knowledge or information sufficient to form a belief as to whether the premises subject to the leased premises is located on the “Western side of the Center” of the Village; but admits that it is located at 350 West Water Street, Painted Post, New York; states that the premises subject to the Lease is located in an area specifically zoned for industrial operations (though railroad operations are exempt from zoning regulations because

of federal preemption) and the premises subject to the Lease is located on a pre-existing rail line which has been located in the Village for many decades; and denies that any “new spurs” are being constructed on the premises subject to the Lease, but states that a rail siding will be so constructed to accommodate certain loading operations; and denies the remaining allegations contained therein.

35. As to the allegations made in paragraphs 42, 43, and 44 of the Petition, WCOR denies Petitioners’ characterization of Chemung Street; states that it is one of several streets in the Village that run east and west and that the premises subject to the Lease is located on a site which is zoned industrial; denies that residential homes adjoin the premises subject to the Lease premises in the manner alleged; but admits that the location of the streets and the geographic layout of same speaks for itself; admits that rail operations have been operating in the Village for many decades in the location at issue; and denies the remaining allegations contained therein.

36. As to the allegations contained in paragraph 45, 46, 47, 48, 49, and 50 of the Petition, WCOR denies the allegation regarding 42 cars as constituting a “lengthy train;” denies the allegation that such a train would take “considerable time” to move through the Village; denies any allegation of significant automobile traffic tie ups; denies that when trains do operate on Chemung Street that “all cross traffic is blocked;” and states that there are alternative routes available to persons living in the Village, including on Chemung Street, if they were to desire to take an alternative route for any reason, including that they did not wish to pass Chemung Street, or Chemung Street became difficult for any reason; and denies the remaining allegations contained in the paragraphs cited.

37. As to the allegations contained in paragraphs 51 and 52 of the Petition, WCOR refers the Court for the location of the rail line at issue which has been in place in the Village of

Painted Post for many decades, and which has served numerous industries; and denies as speculative and without basis that rail line congestion will occur and/or will negatively impact Dresser-Rand's operations.

38. As to the allegations contained in paragraphs 53, 54, 55, and 56 of the Petition, WCOR denies each of the allegations therein, including that the nature of any facilities located outside of the Village of Painted Post are similar to the matters at issue, including the equipment and improvements located on the premises subject to the Lease; denies that automobile traffic blockage will occur; denies that traffic patterns will be altered or that noise impacts or air contamination will increase; and denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations implying that there will be significantly increased heavy truck traffic concerning facilities to which surplus water may be taken, except admits that the routes that rail cars will travel from the Village will be in a generally southerly direction.

39. As to the allegations contained in paragraphs 57 and 58 of the Petition, WCOR admits that surplus water will be sold and admits, pursuant to the agreements at issue, that such water will be transmitted to rail cars from facilities and equipment located on the premises subject to the Lease; refers the Court to the agreements for their true and accurate contents; admits that there have been facilities added to the Village of Painted Post water system between 1941 and 1980; denies the characterization of such addition of facilities as "expansions of the system;" and denies the remaining allegations contained therein.

40. As to the allegations in paragraph 59 of the Petition, WCOR admits that the Village water system serves its residents through a number of connections; refers the Court to the Village's 2000 Annual Drinking Water Quality Report for such figures, which speak for themselves; admits that the Village water system provides water to residents of the Village of

Riverside and Town of Corning; and denies knowledge or information sufficient to form a belief as to the remaining allegations contained therein, including the characterizations of the Village's water system.

41. As to the allegations contained in paragraph 60 of the Petition, WCOR refers the Court to the Water Study referenced therein for the full text of same; denies that the capacities identified for the wells identified in paragraph 60 are accurate as of today; and denies knowledge and information sufficient to form a belief as to the truth and falsity of the remainder of the allegations contained therein.

42. As to the allegations contained in paragraphs 61, 62 and 63 of the Petition, WCOR denies that well number 1 is being brought back into service and further states that the Hunt Report speaks for itself; refers the Court to the Hunt Report for its true and accurate contents; and denies the remaining allegations contained therein.

43. As to the allegations contained in paragraph 64 of the Petition, WCOR admits that the Village water system does draw certain water from the aquifer(s) identified; admits that the New York State Department of Environmental Conservation ("NYSDEC") has identified the Corning aquifer as one of several "primary aquifers" associated with the Cohocton River, and among other so-called primary aquifers in the State of New York; refers the Court to the actual text of the documents cited in paragraph 64, including to the "1990 DEC Division of Water, Technical and Operational Guidance" for their true and accurate contents, which documents speak for themselves; and denies the remaining allegations contained therein.

44. As to allegations contained in paragraphs 65 and 66 of the Petition, WCOR admits that the Village water system draws certain water from an area that is designated a public supply well head area; also admits as set forth previously, that one of the aquifers at issue is a primary

water supply aquifer among several others in the State of New York; and denies the remaining allegations contained therein.

45. As to the allegations contained in paragraphs 67 and 68 of the Petition, WCOR states that the Hunt Report speaks for itself; refers the Court to the Hunt Report, which is submitted as part of the Administrative Record, for its true and accurate contents; denies that the project at issue would require the pumping of 1.44 million gallons per day; but admits that the Hunt Report analyzed projected demand based upon 1,000 gallons per minute; refers the Court to the document referenced in paragraph 68 for its true and accurate contents; and denies the remaining allegations contained therein.

46. WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 69 and 70 of the Petition, including the allegations of the number of water users in the Village in 2001; denies that the withdrawal associated with the project at issue is two to three times the rate of withdrawals by the Village from the wells identified; denies that the Village failed to consider whether increased pumping activities at issue would result in adverse impacts; and denies that the water at issue will be drawn from well number 1.

47. As to the allegations contained in paragraphs 71 and 72 of the Petition, WCOR denies that the Village failed to consider appropriate impacts from the withdrawal of water at issue; as to the allegations contained in paragraph 72, refers the Court to the document associated with the deed for the premises which is subject to the Lease, including the soil management plan and other documents including the delisting documents, which documents are submitted as part of the Administrative Record; and denies the remaining allegations contained therein.

48. WCOR denies the allegations contained in paragraphs 73, 74, 75, and 76 of the Petition, and refers the Court to the Hunt Report for its true and accurate contents, which report is submitted as part of the Administrative Record.

49. As to the allegations contained in paragraphs 77, 78, 79, 80, and 81 of the Petition, WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein, including the allegations that seek to characterize such report based upon a selective quotation of it, as such report speaks for itself.

50. As to the allegations contained in paragraphs 82 and 83 of the Petition, WCOR denies that the Village failed to consider the impacts from the project at issue; denies that contamination would occur under the circumstances set forth therein; denies that industries might find it necessary to incorporate additional filtration systems; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegation regarding whether large-scale water exports from the Corning aquifer are occurring or have occurred; refers the Court to the reports referenced therein, as such reports speak for themselves; and denies the remaining allegations contained therein.

51. As to the allegations contained in paragraphs 84 and 85 of the Petition, WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to what large scale withdrawals were made by Ingersoll-Rand and Corning, Inc. and for what purposes such water was used; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to whether such water so withdrawn was available; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to whether water withdrawn as part of the project at issue will not be returned to the aquifer at issue; and denies the remaining allegations contained therein.

52. As to the allegations contained in paragraphs 86, 87, and 88 of the Petition, WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 86; regarding the allegations in paragraphs 87 and 88, denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the text of the Draft Supplemental Generic Environmental Impact Statement referenced therein; refers the Court to such report for its true and accurate contents; and denies that such report is relevant in any manner to the project at issue.

53. As to the allegations in paragraph 89 of the Petition, WCOR denies that the Village's environmental review failed to take into account impacts as required by applicable law, and denies the remaining allegations contained therein.

54. As to the allegations contained in paragraph 90 of the Petition, WCOR denies knowledge or information sufficient to form a belief as to the truth or falsity of allegations therein, including statements made in newspaper articles cited therein.

55. As to the allegations contained in paragraphs 91 and 92 of the Petition, WCOR denies that a permit is required from the DEC as referenced therein, and denies the remaining allegations contained therein.

56. As to the allegations contained in paragraph 93 of the Petition, WCOR repeats and re-alleges each of the responses set forth above to paragraphs 1 through 92 of the Petition as if more fully set forth herein.

57. As to the allegations contained in paragraphs 94, 95, 96 and 97 of the Petition, WCOR respectfully refers the Court to the regulations at issue, including those regulations found under the SEQRA which speak for themselves; denies any attempt by Petitioners to characterize such regulatory requirements; but admits that the Board of Trustees on behalf of the Village

undertook appropriate actions to make determinations as part of the resolutions at issue for the project at issue, as more fully set forth in the Administrative Record.

58. As to the allegations contained in paragraph 98 of the Petition, WCOR denies that the Village promulgated a negative declaration on March 9, 2012, as such negative declaration was voted upon, passed and filed in the Village Clerk's Office on February 23, 2012 and not March 9th, and denies the remaining allegations contained therein.

59. As to the allegations contained in paragraphs 99 and 100 of the Petition, WCOR refers the Court to the regulations at issue, including the regulations found under SEQRA, which speak for themselves, and denies Petitioners' attempt to characterize such regulatory requirements.

60. WCOR denies the allegations contained in paragraphs 101, 102 and 103 of the Petition.

61. As to the allegations of paragraph 104 of the Petition, WCOR refers the Court to the requirements under the SEQRA; denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to what petitioner believes or contends is "universally accepted;" admits that the Village undertook the requisite review it was required to under applicable law; and denies the remaining allegations contained therein.

62. As to the allegations contained in paragraphs 105 and 106 of the Petition, WCOR admits that due to a typographical error. the words non-applicable were filled in for one of the questions identified; admits that the actual water usage was set forth in the EAF and specifically considered by the Village as more fully set forth in the resolutions adopted by the Village; refers the Court to the EAF and such resolutions, which are submitted as part of the Administrative Record, for their true and accurate contents; and states that in completing the EAF, the aquifer at

issue was not identified as a primary aquifer, but because those issues were considered by Hunt and the Village and, as such, was made part of the Village's negative declaration, and the failure to identify the aquifer at issue as a primary aquifer was not material under the circumstances; and states that as to the allegations regarding the vehicular trips generated per hour, the Village considered the use of rail traffic, but did not believe that "vehicular trips" under the EAF applies to rail traffic and, in any event, such rail traffic was separately considered and such rail operations and consideration of impacts from such rail operations are also subject to pre-emption under the Interstate Commerce Commission Termination Act; denies that the Village failed to consider operating noise as the resolutions at issue specifically identified noise as an impact; denies the allegations that the project at issue will produce significant air quality impacts; denies that the Village failed to consider same; denies that area around the site is not suitable for the project at issue as the site is zoned industrial; denies that the action will create a demand for community provided services, as the only water to be sold as surplus water, and the Village, as well as the Susquehanna River Basin Commission, has determined that such water is in more than adequate supply; denies that the project at issue required any funding; denies that any federal approvals are required under the project at issue; admits that the Village completed the form; refers the Court to the form for its true and accurate contents; and denies the remaining allegations contained therein.

63. WCOR denies the allegations contained in paragraph 107, 108, and 109 of the Petition.

64. As to the allegations contained in paragraph 110 of the Petition, WCOR repeats and re-alleges each of the responses set forth above to paragraphs 1 through 109 of the Petition as if more fully set forth herein.

65. As to the allegations contained in paragraphs 111, 112, and 113 of the Petition, WCOR denies the allegations contained therein, and refers the Court to the regulations at issue, including those regulations promulgated under the SEQRA, which regulations speak for themselves.

66. As to the allegations contained in paragraphs 113 and 114 of the Petition, WCOR denies that the sale of surplus water is not a bulk sale; denies that the Village has provided any ownership interest in the aquifer or wells at issue; states that in accordance with the documents at issue the Village has merely agreed to provide certain surplus water under certain conditions pursuant to the agreement at issue; and denies the remaining allegations contained therein.

67. As to the allegations contained in paragraphs 115 and 116 of the Petition, WCOR denies that the Village has designated pumping capacity of Village wells as “surplus water;” refers the Court to the agreements at issue, which are submitted as part of the Administrative Record, for their true and accurate contents; and denies the remaining allegations contained therein.

68. As to the allegations contained in paragraph 117 and 118 of the Petition, WCOR refers the Court to documents at issue, including the State Water Supply Commission’s establishment of the water system in the Village, as well as the regulations at issue, which documents and regulations speak for themselves; denies that the Village failed to undertake its duties as required; and denies the remaining allegations contained therein.

69. As to the allegations contained in paragraph 119 of the Petition, WCOR repeats and re-alleges each of the responses set forth above to paragraphs 1 through 118 of the Petition as if more fully set forth herein.

70. As to the allegations in paragraphs 120 through 123 of the Petition, WCOR denies that the Village segmented its review under applicable law, and denies the remaining allegations contained therein.

71. As to the allegations contained in paragraph 124 of the Petition, WCOR denies the characterization of Petitioners as to the Village's actions' refers the Court to the agreements identified therein, which are submitted as part of the Administrative Record, for their true and accurate contents; and denies the remaining allegations contained therein.

72. As to the allegations contained in paragraph 125, 126 and 127 of the Petition, WCOR denies that the Village will be unable to provide surplus water without the facility referenced; denies that the Village failed to comply with various requirements under applicable law including the SEQRA; denies that the Village segmented any review under the SEQRA and applicable law, and denies the remaining allegations contained therein.

73. As to the allegations contained in paragraph 128 of the Petition, WCOR repeats and re-alleges each of the responses set forth above to paragraphs 1 through 127 of the Petition as if more fully set forth herein.

74. As to the allegations contained in paragraphs 129, 130, 131, and 132 of the Petition, WCOR refers the Court to the regulations at issue for their true and accurate contents; denies that WCOR a railroad in interstate commerce was required to obtain a permit under the circumstances giving the clear provisions of the regulations and statutes at issue; and denies the remaining allegations contained therein.

75. As to the allegations contained in paragraphs 133, 134, 135 and 136 of the Petition, WCOR refers the Court to the text of proposed laws and amendments for their true and

accurate contents, and denies Petitioners' characterization of the proposed laws and regulations at issue, and denies the remaining allegations contained therein.

76. As to the allegations contained in paragraph 137 of the Petition, WCOR repeats and re-alleges each of the responses set forth above to paragraphs 1 through 136 of the Petition as if more fully set forth herein.

77. As to the allegations contained in paragraphs 138, 139, 140, and 141 of the Petition, WCOR denies the characterization of the Village's negative declaration; refers the Court to such negative declaration, which is submitted as part of the Administrative Record, for its true and accurate contents; denies that any permits or authorization is required from the Surface Transportation Board or the Federal Railroad Administration; and denies the remaining allegations contained therein.

78. WCOR denies each and every allegation contained in the Petition not heretofore admitted, denied or otherwise controverted.

79. WCOR denies that the Petitioners are entitled to any relief including the relief sought as is set forth in the wherefore clause found in this Petition, including denying that Petitioners are entitled to any of the relief sought in subparts 1 through 9.

AS AND FOR A FIRST OBJECTION IN POINT OF LAW

80. The Petitioners, Sierra Club; People for a Healthy Environment, Inc.; Coalition To Protect New York; John Marvin; Therese Finneran; Michael Finneran; Virginia Hauff; and Jean Wosinski lack standing to maintain this proceeding both in their capacity as organizations and associations, as well as in their individual capacities because, among other things, the organizations have not demonstrated that they have standing through individuals and those organizations and/or associations are not otherwise entitled to maintain this action, and because

the individual and organizational Petitioners herein have alleged no particularized injury or other injury as required under law, because none has suffered any harm distinct from the general public and no other distinct or separate injury or damages is alleged as required.

AS AND FOR A SECOND OBJECTION IN POINT OF LAW

81. Upon information and belief, Petitioners' claims are barred under applicable statutes of limitation and/or by the doctrine of laches because Petitioners failed and refused to initiate this action in a timely manner and/or otherwise failed to exercise their rights in a timely manner under the circumstances.

AS AND FOR A THIRD OBJECTION IN POINT OF LAW

82. The Petition should be dismissed in its entirety because the claims alleged therein fail to state any claim as a matter of law.

AS AND FOR A FOURTH OBJECTION IN POINT OF LAW

83. Petitioners, by and through their Petition, fail to state a cause of action upon which relief may be granted.

AS AND FOR A FIFTH OBJECTION IN POINT OF LAW

84. The actions undertaken by WCOR and the other Respondents, including the Village, were reasonable, in good faith, and such acts were not arbitrary, capricious or in excess of authority, nor were such actions taken in absence of substantial evidence.

AS AND FOR A SIXTH OBJECTION IN POINT OF LAW

85. The Administrative Record contains more than ample factual bases concerning the determinations made by the Village, and the Village conducted a proper and valid review of the project at issue in conformity with applicable standards and law. As such, the Petition should be dismissed in its entirety.

AS AND FOR A SEVENTH OBJECTION IN POINT OF LAW

86. The Village identified the areas of environmental concern associated with the project at issue, took the requisite “hard look,” and thereafter, issued a reasonable elaboration for its determination, that no significant adverse impacts would result from such project, including complying with each applicable law, rule and regulation; including, but not limited to, those found under the SEQRA; and as such, the determinations made by the Village as required including, by virtue of the negative declaration which it issued on February 23, 2012, should be sustained in every respect.

AS AND FOR AN EIGHTH OBJECTION IN POINT OF LAW

87. Petitioners have failed to exercise and to exhaust their administrative remedies.

AS AND FOR A NINTH OBJECTION IN POINT OF LAW

88. Petitioners’ claims, including those purporting to be made under federal law, including, but not limited to the National Environmental Policy Act of 1969 and other laws, and federal statutory law cited in the Petition, may only be initiated and filed by an action undertaken in federal court; may only be initiated after certain conditions and other prerequisites are met, including, but not limited to, exhaustion of administrative remedies; and, therefore, each of those claims must be dismissed in their entirety. Regarding actions pursuant to the ICCTA, the Surface Transportation Board has exclusive jurisdiction regarding the facilities and operations of all interstate railroads, and this court has no jurisdiction to consider those issues.

AS AND FOR A TENTH OBJECTION IN POINT OF LAW

89. Upon information and belief, some or all of Petitioners’ claims regarding alleged violations of laws do not provide for the private right of action and, on that basis, the Petition should be dismissed in part or in whole.

AS AND FOR AN ELEVENTH OBJECTION IN POINT OF LAW

90. Each of the Petitioners' claims are barred by the doctrine of mootness, as construction of the project was substantially complete before the original return date for this proceeding, thereby mootng each of the claims made by Petitioners.

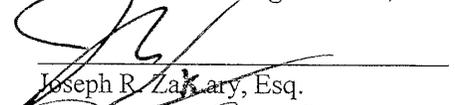
AS AND FOR A TWELFTH OBJECTION IN POINT OF LAW

91. Each of the claims asserted in the Petition are barred because Petitioners have failed to join parties necessary to adjudicate this matter, including indispensable parties.

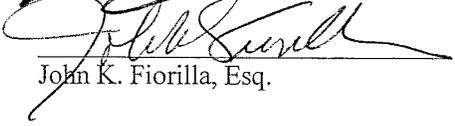
WHEREFORE, Respondent WCOR demands judgment dismissing the Petition, together with reasonable attorneys' fees and costs, and such other and further relief as this court deems just and proper.

DATED: September 11, 2012
Elmira, NY and Mt. Laurel, NJ

CAPEHART & SCATCHARD, P.A.
Attorneys for Respondent
Wellsboro & Corning Railroad, LLC



Joseph R. Zarkary, Esq.



John K. Fiorilla, Esq.

1 West Church Street
Elmira, New York 14901
(607) 428-8877

8000 Midlantic Drive
Suite 300S, P.O. Box 5016
Mt. Laurel, NJ 08054
(856) 914-2054

To: Rachel Treichler, Esq.
Attorney for Petitioners
7988 Van Amburg Road
Hammondsport, NY 14840

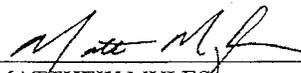
Richard J. Lippes, Esq.
Richard J. Lippes & Associates
Attorneys for Petitioners
1109 Delaware Avenue
Buffalo, NJ 14209

Joseph D. Piccitotti, Esq.
Harris Beach PLLC
Attorneys for Respondents
Village of Painted Post
Painted Post Development, LLC
SWEPI, LP
99 Garnsey Road
Pittsford, NY 14534

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CHESTER) ss.:

MATTHEW MYLES being duly sworn, deposes and says he is the General Manager of the Wellsboro & Coming Railroad LLC; that he has read the foregoing Verified Answer and Objections and Point of Law, and that as to the factual matters contained therein, he believes the same to be true based upon the knowledge of the deponent and except as to those matters stated upon information and belief, and that as to those matters, he believes them to be true based upon reasonable inquiry.


MATTHEW MYLES

Sworn to before me this
10th day of September, 2012


Notary Public

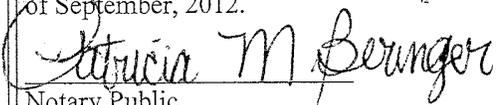
COMMONWEALTH OF PENNSYLVANIA
Notary Seal
KATHLEEN E. THOMS, Notary Public
East Goshen Twp., Chester County
My Commission Expires May 04, 2014

VERIFICATION

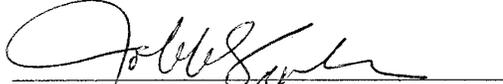
STATE OF NEW JERSEY)
COUNTY OF BURLINGTON) ss.:

JOHN K. FIORILLA, ESQ., being duly sworn, deposes and says: that he is an attorney for Respondent, Wellsboro & Corning Railroad, LLC, in this article 78 proceeding; that he has read the foregoing Verified Answer and Objections and Point of Law, and that as to the factual matters contained therein, he believes the same to be true based upon the knowledge of the deponent, and except as to those matters stated upon information and belief, and that is to those matters, he believes them to be true based upon reasonable inquiry.

Sworn to and Subscribed
before me this 10th day
of September, 2012.



Notary Public



JOHN K. FIORILLA

PATRICIA M. BERINGER
A Notary Public of New Jersey
My Commission Expires April 29, 2013

NOTICE OF MOTION OF RESPONDENT WELLSBORO AND CORNING RAILROAD,
DATED OCTOBER 2012 [407-409]

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

**NOTICE OF MOTION OF
RESPONDENT
WELLSBORO AND
CORNING RAILROAD,
LLC**

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

Index No.: 2012-0810

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

Motion by: Respondent, Wellsboro and Corning Railroad, LLC

Date, Time and Place of Hearing _____, 2012, at ____ a.m.
at Bath, New York

Supporting Papers: (1) Verified Answer and Objections in Point of Law, filed September 20, 2012, (2) the accompanying Memorandum of Law, dated September 28, 2012, and (3) Notice of Motion on behalf of Respondents the Village of Painted Post Painted Post Development, LLC, and Swepi, LP and supporting documents filed herewith including Memorandum of Law and the Affidavit of Roswell Crozier, together with the exhibits attached thereto, sworn to August 1, 2012, the Affidavit of Larry Smith, together with the exhibits attached thereto, sworn to August 1, 2012, the Affidavit of Robert Drew, together with the attached exhibits sworn to on August 1, 2012, the Affidavit of William Myles, sworn to on August 2, 2012, the Affidavit of Anne Names, sworn to on August 1, 2012, the Affidavit of William Gough, sworn to on August 1, 2012.

Grounds: 1. The Objections set forth in the Respondent's Verified Answer and Objections in Point of Law;

- 2. CPLR §§ 7803 and 7804 (f) in that the action may not be maintained with respect to the movant under Article 78 of the CPLR;
- 3. CPLR § 3211 (a)(3) in that Petitioner lacks standing to maintain this proceeding;
- 4. CPLR § 3211 (a)(7) in that the action may not be maintained with respect to the movant for failure to state a cause of action; and
- 5. CPLR § 3212 for summary judgment for the reasons set forth in the documents submitted herewith in that any relief sought against the moving Respondent is preempted by the Interstate Commerce Commission Termination Act of 1995, 49 USC §701 to §702 and §10101 to §16106.

Relief Requested:

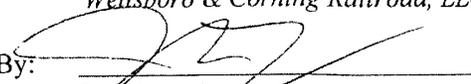
- 1. An Order dismissing Verified Petition in its entirety with prejudice and/or and Order granting summary judgment to the Moving Respondent in all aspects and dismissing with prejudice Petitioner's Verified Petition dated June 22, 2012; and
- 2. Such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this action.

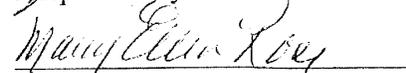
Responding Papers:

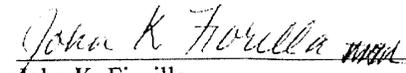
Pursuant to CPLR § 2214(b), all answering papers, including cross-motions, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion, and all reply papers, if any, will be served at least one (1) day prior to the return date of this motion .

DATED: October __, 2012
Elmira, NY and Mt. Laurel, NJ

CAPEHART & SCATCHARD, P.A.
Attorneys for Respondent
Wellshoro & Corning Railroad, LLC

By: 
Joseph Zakhar

By: 
Mary Ellen Rose

By: 
John K. Fiorilla

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(607) 428-8877

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To: Rachel Treichler, Esq.
Attorney for Petitioners
7988 Van Amburg Road
Hammondsport, NY 14840

Richard J. Lippes, Esq.
Richard J. Lippes & Associates
Attorneys for Petitioners
1109 Delaware Avenue
Buffalo, NJ 14209

Joseph D. Piccitotti, Esq.
John A. Mancuso
Harris Beach PLLC
Attorneys for Respondents
Village of Painted Post
Painted Post Development, LLC
SWEPI, LP
99 Garnsey Road
Pittsford, NY 14534

**AFFIDAVIT OF MICHAEL J. FINNERAN, IN OPPOSITION TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18,
2012 [410-412]**

1966921

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

State of New York,
County of Steuben, ss.:

MICHAEL J. FINNERAN, being duly sworn, deposes and says:

1. I am a resident of the Village of Painted Post. I live at 123 West Hill Terrace in the house in which I grew up. I lived here between 1964 and 1983, and moved back to live with my mother in 2006. I am 51 years old. I was born in 1961.

2. Our drinking water is provided by the Painted Post village water system.

3. I am concerned as to future availability and quality of potable water used by the residents of Painted Post and myself. The concern is brought up due to the current withdrawal and sale of water for use, to my understanding, in gas drilling operations.

4. In September 2011 it was brought to my attention that the Village of Painted Post was considering selling water in an amount up to 1,000,000 gallons per day, and I attended village

board meetings where the sales were discussed and voted on by the village board.

5. Beginning in early June 2012, I observed construction on the old Ingersoll Rand foundry site along Chemung Street, and also observed construction being done on Charles Street near Chemung Street. It looked to be work being done on the water line. During this time I also noticed what appeared to be work being done around the pump house on Fairview Drive and saw orange plastic fencing on the Fairview Drive side of the pump house.

6. During the month of July 2012 I saw rail road tracks being installed at the old foundry site.

7. In August, 2012, I observed rail tank cars lined up along the tracks in the water filling yard on some days during the week and on other days saw the rail yard being empty of rail tanks. One Friday night I observed that the tracks were empty and the following Saturday morning I saw the tracks were lined up with rail tank cars. What I saw at that time indicated to me that daily movements of rail tank cars were occurring.

8. The observation of so many rail tanks being moved on what seems to be a daily basis indicates to me that there is a large amount of water being withdrawn.

9. I am concerned about the long term affects of such heavy water withdrawal and transportation (in my opinion) may have upon future water availability for the residents of Painted Post.

10. It seems to me that the water being withdrawn for water transportation and to my understanding to be used for gas hydrofracking is withdrawn from the same source as the water that is withdrawn and used for public use by the Village. That source being the underground water system (aquifer).

11. One million gallons (or more)/day seems to be a high volume of water to be withdrawn and transported out of the area. This concerns me as to future water availability.

12. I am also concerned that the location of the rail loading facility on a former site

used by Ingersoll-Rand and I wonder what water may have been on the site and possibly disturbed by the construction of the water filling facility and if this may lead to future contamination of aquifer.

13. My current concern is of the future availability and quality of potable water.

14. Because of my concerns about the impacts of the water withdrawals on the Corning aquifer, I have joined some of my fellow petitioners in testing my tap water and the tap water elsewhere in Corning for total dissolved solids (TDS). I have been using an HM Digital COM-100 digital meter. The HM Digital COM-100 meter measures electrical conductivity and temperature and extrapolates TDS from conductivity. This meter is factory calibrated. The results of each of the three measurement options are read by switching directly from one mode to another. I used the TDS mode in my water quality testing.

15. My testing has been at my home in Painted Post and at some other locations in the Village. My testing at other properties in the area showed similar results. My test results are shown in Exhibit A attached. The tests I have taken have ranged from a high of 500 ppm on the first day I tested, 10/27/12, to a low of 450 ppm on the last day I tested, 12/01/12.

I have personal knowledge of all facts set out in this affidavit.



Sworn to before me this 18th day of December 2012.



Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

EXHIBIT A – WATER TESTING TABLE

Exhibit A

**Water Testing for Total Dissolved Solids from Municipal Taps
in the Village of Painted Post by Michael Finneran**

<u>Date</u>	<u>Address</u>	<u>Municipality</u>	<u>TDS ppm</u>	<u>Comment</u>
10/17/12	123 West Hill Terrace	Village of Painted Post	500	69 degrees (f)
10/20/12	123 West Hill Terrace	Village of Painted Post	451	63 degrees (f)
10/23/12	123 West Hill Terrace	Village of Painted Post	466	71 degrees (f)
10/25/12	123 West Hill Terrace	Village of Painted Post	471	69 degrees (f)
11/01/12	123 West Hill Terrace	Village of Painted Post	471	70 degrees (f)
11/04/12	123 West Hill Terrace	Village of Painted Post	467	71 degrees (f)
11/04/12	123 West Hill Terrace	Village of Painted Post	469	66 degrees (f)
11/24/12	123 West Hill Terrace	Village of Painted Post	475	73 degrees (f)
12/01/12	130 West Water St.	Village of Painted Post	465	71 degrees (f)
12/01/12	335 Steuben St.	Village of Painted Post	486	75 degrees (f)
12/01/12	365 Steuben St.	Village of Painted Post	484	74 degrees (f)
12/01/12	366 Steuben St.	Village of Painted Post	450	66 degrees (f)

**AFFIDAVIT OF MARY FINNERAN, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[414-415]**

1906924

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

Index No. 2012-0810CV

-against-

Justice Alex R. Renzi

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Steuben, ss.:

MARY FINNERAN, being duly sworn, deposes and says:

1. I am a resident of 104 Jerome Ave. in the village of Cairo, Greene County NY. I grew up at 123 West Hill Terrace, in the Village of Painted Post and go back frequently to visit my mother and brother, who still live there. I have interviewed for jobs in the area on several occasions (unsuccessfully), and plan to relocate there after retirement in the not to far distant future.

2. When I visit, I drink the water from their tap, which is supplied by the Village of Painted Post. Pipes from the municipal water system run directly to their house.

3. If the Painted Post Village drinking water supply were to be diminished or contaminated, it could affect my health and make it difficult for me to continue visiting my old home. Of course my concern is greater that family and residents of the entire area served by the

system could experience ill effects, which could have a negative effect on the overall economy of our area.

4. Because of my concerns about the impacts of the water withdrawals on the Corning aquifer, I have joined my brother in testing tap water in the area for total dissolved solids (TDS). I have been using an HM Digital COM-100 digital meter. The HM Digital COM-100 meter measures electrical conductivity and temperature and extrapolates TDS from conductivity. This meter is factory calibrated. The results of each of the three measurement options are read by switching directly from one mode to another. I used the TDS mode in my water quality testing. My test results are shown in Exhibit A attached.

5. I find it very interesting that my test results from taps drawing on the water supply of the City of Corning show higher TDS levels than my tests or my brother's tests of the water supply in the Village of Painted Post this fall. This is an indication that the withdrawals may be having a more serious impact on the Corning water supply than they are having on the Painted Post water supply.

I have personal knowledge of all facts set out in this affidavit.

Mary T. Lemica

Sworn to before me this 18th day of December 2012.

Robert Terinler

Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

EXHIBIT A – WATER TESTING TABLE

Exhibit A

Water Testing for Total Dissolved Solids by Mary Finneran
in Corning and Painted Post, NY

<u>Date</u>	<u>TDS mg/L</u>	<u>Address</u>	<u>Municipality</u>	<u>Comments</u>
11/01/12	477	116 Keefe Blvd.	Village of Painted Post	temp: 66 degrees
11/04/12	791	300 Nasser Civic Center Plaza, #101	City of Corning	temp: 66 degrees
11/04/12	808	65 Corning Blvd.	City of Corning	
11/24/12	450	527 Park Place	Village of Painted Post	temp: 63 degrees
11/24/12	736	300 Nasser Civic Center Plaza, #101	City of Corning	temp: 69 degrees

**AFFIDAVIT OF THERESE FINNERAN, IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[417-419]**

1966925

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

Index No. 2012-0810CV

-against-

Justice Alex R. Renzi

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Steuben, ss.:

THERESE FINNERAN, being duly sworn, deposes and says:

1. I am a resident of the Village of Painted Post, New York. I have lived at 123 West Hill Terrace, in the Village, for 48 years from July 1964 to the present. I own the property where I live. My husband and I built the house in 1964. It is located on West Hill overlooking the valley where Painted Post is located. We are one mile from the new rail yard in which train cars are filled with water. The assessed value of my house is \$161,000. My son Michael lives in my house with me. I am 85 years old. I was born in 1927.

2. Our drinking water is supplied by the Village of Painted Post. Pipes from the municipal water system run directly to our house.

3. If the Painted Post Village drinking water supply were to be diminished or contaminated, it could affect my health and make it difficult for me to continue living in my home.

It could also reduce the value of my property. My neighbors and residents of the entire area served by the system could experience the same effects, which could have a negative effect on the overall economy of our area.

4. My doctors' offices are on South Hamilton St. at Beartown Rd. They are Joseph Mothy, General Practitioner and William DeLuccia, Cardiologist. So far I have been late for an appointment only once due to train traffic. There are two ways to avoid this Hamilton and Chemung St. crossing. One is in Riverside and the other is to go west on Victory Highway and cross over to Gang Mills and to the Beartown Road. Either detour can take 15 to 20 minutes to execute—important should there be an emergency as I have Congestive Obstructive Pulmonary Disease (COPD) as well as Atrial Fibrillation and Heart Failure in my health history.

5. I am concerned that if there is a lot more train traffic in the Village, it could make it difficult for me to get to my doctors in a timely fashion.

6. I first learned of the Village of Painted Post plans to sell the Village water to SWEPI at a Village Board meeting in September 2011. At that time Jean Wosinski, a resident of Corning and a professional geologist, spoke of the aquifer beneath this area and warned of the possible effects that could result from excessive withdrawal of water. No discussion on the matter was held.

7. I was aware in the spring of 2012 of work being done on the well across from the Depot on Steuben St. and in the rear of the old cemetery near Fairview Avenue. I also saw white pipes laid along Charles St. prior to their installation.

8. I heard of the building of new rails on Chemung St. in June 2012. The work moved quickly and in August I noted the installation of pumps, 42, one tanker length apart. Several times after this I noted the pumps actually attached to the tank cars and hoses connected. Specifically, on September 4, 2012, around 3-4 pm in the afternoon, I saw hoses connected to the tank cars. Aaron Kasmer of 570 Chemung St. told me the cars were moved out that evening.

9. I feel that as a resident of Painted Post I should have had more input into the

Village's decision to sell millions of gallons of water and the possible future effect this will have on a resource that we cannot live without.

I have personal knowledge of all facts set out in this affidavit.

Thomas S. Finnan

Sworn to before me this 18th day of December 2012.

Rachel Treichler

Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

**AFFIDAVIT OF JACK OSSONT, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[420-421]**

1966928

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

State of New York,
County of Schuyler, ss.:

JACK OSSONT, being duly sworn, deposes and says:

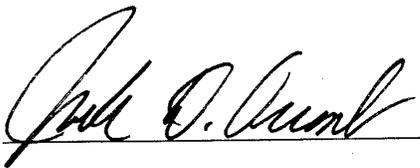
1. I am a founding member of the Coalition to Protect New York (CPNY).
2. The Coalition to Protect New York is a coalition of local environmental groups in the Finger Lakes – Southern Tier area, and as such, is an unincorporated association. The members of Coalition to Protect New York work together to promote the health and vibrancy of our land and our resources, and to oppose the harms that will be caused by the hydrofracking and drilling of gas wells. The protection of water resources and water rights from the damaging effects of water withdrawals for hydraulic fracturing for gas drilling is a key focus of the work of the Coalition. Certain of the member organizations of the Coalition, and their membership, obtain

their drinking water from water supplies that may be adversely affected by the actions complained of in this Petition.

3. People for Healthy Environment, Inc. (PHE) is one of the member organizations of CPNY. The membership of PHE is centered in the Elmira, New York area. Of the 60 members of the PHE, 14 live in the City of Elmira, 15 live in the Town of Horseheads, two live in the Town of Big Flats, and two live in the City of Corning.

4. As noted in the affidavit of Ruth Young, the President of PHE, the majority of PHE's members live immediately downriver from the Corning aquifer and damage to the Corning aquifer may damage their drinking water supplies. The drinking water for many PHE members is supplied by the Chemung River and the Elmira-Horseheads-Big Flats aquifer. If the drinking water sources supplying PHE members were to be diminished or contaminated, it could affect their health and make it difficult for them to continue living in their homes. It could also reduce the value of their property. Their neighbors and residents of the entire area served by the Chemung River and the Elmira-Horseheads-BigFlats aquifer could experience the same effects, which could have a negative effect on the overall economy of the area.

I have personal knowledge of all facts set out in this affidavit.



Sworn to before me this ^{18th} day of December 2012.



Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

**AFFIDAVIT OF KATE BARTHOLOMEW, IN OPPOSITION TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18,
2012 [422-425]**

1966931

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Laws and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

State of New York,
County of Schuyler, ss.:

KATE BARTHOLOMEW, being duly sworn, deposes and says:

1. I am the chair of the Finger Lakes Group of the Sierra Club.
2. The Sierra Club is a not-for-profit corporation organized under the laws of the State of California. It is the oldest and largest environmental organization in the country. The Sierra Club has more than 600,000 members nationwide, including approximately 37,000 members in New York State, many of whom live in the Village of Painted Post in Steuben County, New York and surrounding areas, and approximately 24,000 members in Pennsylvania, many of whom live in the borough of Wellsboro, in Tioga County, Pennsylvania and surrounding areas.

3. The Finger Lakes Group is one of eleven groups in the Sierra Club's Atlantic (New York State) Chapter. As of Dec. 9, 2012, the group has 61 members whose zip codes show that they live in Painted Post or Corning, and thus that they live above the Corning aquifer, and 83 members whose zip codes show that they live in Elmira, Horseheads or Big Flats, and thus live above the Elmira-Horseheads-Big Flats aquifer. Two members of our Finger Lakes Group Executive Committee live above the Corning aquifer, one in the Town of Erwin and one in the Town of Corning.

4. As of Dec. 13, 2012, the Sierra Club's Pennsylvania Chapter has 65 members whose zip codes show that they live in Tioga County, Pennsylvania, 27 of whom live in the Wellsboro zip code.

5. The protection of water resources is a key aspect of the Sierra Club's work, at the national, state and local levels. The Sierra Club, and its members, have long been concerned about both the quantity and quality of this country's potable drinking water supplies, and have worked to educate the public to assure safe drinking water supplies for its members and the public, and have brought numerous lawsuits to protect those drinking water supplies under various federal, state and local laws.

6. Protection of our local water sources is a key focus of our Finger Lakes Group activities. For several years, the group organized and sponsored an annual water day event on Keuka Lake to educate the public about local water issues. In June 2012 we teamed up with the Sierra Club's national water sentinels training program to offer a water monitoring training that was held in Painted Post. The training program was attended by more than 30 concerned citizens from this area. Seventeen members of the water monitoring group met in Painted Post on December 10, 2012, to discuss their monitoring results and submit samples for laboratory testing.

7. Sierra Club members in Painted Post and surrounding areas will be adversely affected by the actions complained of in this petition. Their drinking water supplies may be contaminated or diminished and they may be adversely affected by the increase in rail traffic, automobile traffic blockages, and the increased noise and air contamination that will be created in Painted Post by the water shipments from the rail loading facility and the receipt of empty railcars at the loading facility caused by the project complained of herein.

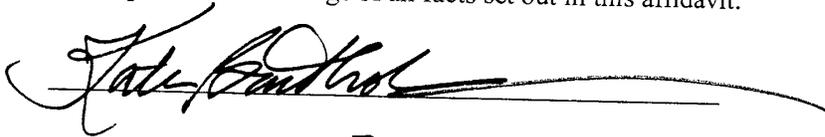
8. One of our Finger Lakes Group Executive Committee members, Eugene Stolfi, has provided an affidavit with some of his water testing results and his interpretation of what these results may signify.

9. Sierra Club members in Tioga County, Pennsylvania, and surrounding areas will also be adversely affected by the increase in rail traffic, automobile traffic blockages, and the increased noise and air contamination that will be created at the terminus of the rail line in Wellsboro, Pennsylvania, by the receipt of the water shipments and the return of empty railcars. Moreover, Club members in Wellsboro and surrounding communities will be adversely affected by the many heavy tanker truck trips required to transport the water from the rail terminus to water impoundment facilities and subsequently to various gas well drilling and high-volume, slick water hydraulic fracturing sites in surrounding areas.

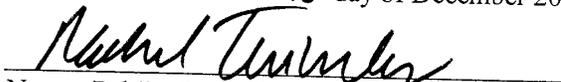
10. As a NYS certified Science Teacher employed by Watkins Glen Central School District and a member of the Southern Tier Central Regional Planning Board, I am baffled by the lack of thorough, long-term study given to the impact these withdrawals could pose to the relatively shallow glacial till filled Corning aquifer. The USGS is in the midst of redrawing the flood plain maps for the whole Chemung-Tioga River area because hundred year flood events are now occurring every 10 to 20 years. The whole system is in transition; any data and studies extant prior to 2000 are, for a projected withdrawal of this magnitude, irrelevant at this juncture.

11. Even without the major meteorological and climate shifts now transpiring, the last in-depth study of the Corning aquifer was published in 1988 by the Susquehanna River Basin Commission: "Ground-Water Flow Model of the Corning Area, New York." This 132-page study, prepared by hydrogeologist Paula B. Ballaron, should be replicated and expanded before permitting the permanent removal of such large volumes of water from the aquifer and the watershed itself.

I have personal knowledge of all facts set out in this affidavit.



Sworn to before me this 18th day of December 2012.


Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

**AFFIDAVIT OF GERALD AND TERESA FLEGAL, IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON
DECEMBER 18, 2012 [426-428]**

1966935

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

Index No. 2012-0810CV

-against-

Justice Alex R. Renzi

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Steuben, ss.:

GERALD and TERESA FLEGAL , being duly sworn, depose and say:

1. We are residents of the Village of Painted Post. We have lived at 200 Charles St. since September 1995. We own the property. We purchased the property in 1995. The currently assessed value of our property is \$59,800.

2. Our home is located at the intersection of Charles St. and Chemung St. The railroad tracks run down Chemung Street along the side of our house. We are about 30 feet from the rail loading facility. The location of our property is shown on the attached aerial photograph from Google Maps.

3. In May 2012, we observed that construction had begun at the old foundry site at the corner of Charles and Chemung St. We saw digging and earth moving at the site. Teresa learned about the construction when a construction worker told her that we couldn't park in front of our house.

4. We learned from the construction workers that the work was to build a water loading facility. We were surprised that it was so close because when we first heard about the facility we assumed that it would be on the other side of the old foundry site along Water St, where a truck-loading facility had been proposed several years before.

5. We observed that the loading facility appeared to be complete in mid-August. During the first several weeks, the trains were loaded infrequently.

6. Starting about the fourth week of August, the trains began running almost every night. We heard lots of noise every night when the trains were being loaded. We heard both track noises and train whistles.

7. The noise kept us from getting to sleep or when we finally did get to sleep and then train would come through and wake us up. The lack of sleep was beginning to cause health problems for both of us. We talked to our neighbors and discovered that many of our neighbors were experiencing the same problems.

8. The noise that we heard from the trains entering and exiting the loading facility during this time was much louder than the train noises we were accustomed to hearing and occurred at night rather than during the day. None of the other trains that run through the Village run at night.

9. During the time we have lived 200 Charles St., both of us have worked away from our home during the day, and we frequently go elsewhere on the weekends, so we do not generally hear trains that run during the day.

10. As a result of our concerns about the levels of noise we were hearing at night, we obtained a noise meter and began measuring decibel levels. The type of meter we obtained was an Extech 407730 40-to-130-Decibel Digital Sound Level Meter.

11. We measured noise levels at night from August 29, 2012 to September 6, 2012. The measurements we took are shown in Exhibit A. The highest decibel level we measured was 102 db at 10:30 pm on August 30, 2012.

12. Many of the residents of this area were concerned about the noise and spoke out about their concerns. Several articles appeared in the *Corning Leader* about noise concerns: "Painted Post Water Sales: Late Trains Rattle Residents," Jeffrey Smith, *Corning Leader*, Aug. 26, 2012, and "Residents Weary of Night Trains," Jeffrey Smith, *Corning Leader*, Sept. 11, 2012. These articles are attached as Exhibit B.

13. On Monday September 10, 2012, we attended a village board meeting and expressed our concerns about the noise, as did many of our neighbors. The meeting was covered in the article referenced above, "Residents Weary of Night Trains," Jeffrey Smith, *Corning Leader*, Sept. 11, 2012, attached as Exhibit B.

14. From Friday September 7, 2012, there were no trains for two to three weeks.

15. We understand that the water trains have started running again during the day.

16. We heard several explanations for the fact that no trains ran for several weeks. The first week we heard that the water pump broke. The second and third week we heard that the company ordering the water was not going to order any more until the problem was solved.

17. If problems with train noises at night start again, we may be forced to sell our home.

18. Before the water trains started running, we had never witnessed all three of the main intersections in the Village being blocked by trains. After the water trains started running we have seen this on many occasions.

We have personal knowledge of all facts set out in this affidavit.

 _____  _____

Sworn to before me this 18th day of December 2012.

 _____
Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified In Steuben County
Commission expires 04/22/2014

EXHIBIT A – SOUND TESTING TABLE

Exhibit A

Sound Testing for Decibel Levels at 200 Charles, St., Painted Post, NY

<u>Date and Time</u>	<u>Decibels</u>	<u>Comments</u>
Wed., 8/29/12 1:30 AM	63.0	Train arrived
Wed., 8/29/12 1:30 AM	91.0	Train departed
Thurs., 8/30/12 10:30 PM	102.0	Earliest time train arrived
Thurs., 8/30/12 11:00-11:30 PM	—	Idled
Mon., 9/03/12 12:10 AM	64.7	Train arrived
Mon., 9/03/12 1:55 AM	65.0	Train departed, idled from 12:35 until departure
Tues., 9/04/12 12:00 AM	65.0	Train arrived
Wed., 9/05/12 12:00 AM	79.9	Train arrived
Thurs., 9/06/12 12:40-1:00 AM	89.0	Train arrived, took 20 min. to come up the track
Thurs., 9/06/12 1:50 AM	—	Train departed, train idled about 8 min. before departure, counted about 48 cars

**AFFIDAVIT OF JOHN MARVIN, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[430- 433]**

1966938

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

Index No. 2012-0810CV

-against-

Justice Alex R. Renzi

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Steuben, ss.:

JOHN MARVIN, being duly sworn, deposes and says:

1. I am a resident of the Village of Painted Post. I have lived at 240 Charles St. since 1979. My wife and I own the property. We purchased the property in 1979. The currently assessed value of our property is \$90,000.
2. I am 70 years old. I was born in 1942. My wife is 74 years old. She was born in 1938.
3. My wife suffered a stroke in 2006 and is totally incapacitated. I care for her in our home.
4. Our home is located one-half block from the railroad line that crosses Charles Street and a block and a half from the rail-loading facility at issue in this case. The location of our home is shown on the aerial photograph from Google.com attached as Exhibit A.
5. I can see the rail-loading facility from my front door across the lawn of the old high school.

6. Our drinking water is supplied by the municipal water system of the Village of Painted Post. Pipes from the municipal water system run directly to our home.

7. If the Village of Painted Post municipal drinking water supply were to be diminished or contaminated, it could affect the health of myself and my wife and make it difficult for us to continue living in our home. It could also reduce the value of our property.

8. I walk my dog around the neighborhood many times a day. In the morning, I usually walk down to corner of Chemung and Charles St. In the middle of the day, I usually walk up to the cemetery off Fairview Ave. I walk over by the water-loading facility on Chemung St. at least once in the evening before going to bed.

9. I first learned of the Village of Painted Post plans to sell water to SWEPI in March 2012 when I saw during my walks that the Village was pumping water from the well across the street from the old Depot at corner of Steuben St and Fairview Ave. and running it down a 4 inch line to the storm drain on Steuben St. down the hill near the corner of High St. The pumping was all day every day for over a month. The pumps were turned off at night.

10. I was concerned that so much water was being pumped for so long, and wondered why the pumping was going on. I spoke to Bob Helms, the Village Chief of Police and Larry Smith from the Village Water System to find out about this. I was told that the Village was doing the pumping to see if they could pump the well down to a level where there were solids or contaminants in the well and that this was in preparation for water sales.

11. Also in March 2012, I saw work being done on the well that they were pumping from. I saw a large water well drilling rig at the site for several weeks. My daughter, Heather Moran, who lives at 266 Charles St., told me that they pulled out a 12 foot pipe that was in the well and replaced it with a 25 foot pipe in the well.

12. At this time, white 4 inch pipes were laid along Hemley Lane and part of Charles St., and subsequently were installed in those streets. I could not tell whether a new line was being installed or whether this replaced existing line.

13. In June 2012, I observed that construction had begun at the old foundry site along Chemung St. There was a lot of earth moving equipment. I was told that they could not take any dirt away from the site because of the contaminants in the soil, but that they could bring dirt in and that is what they did. After they graded the piles of dirt at the site, they put up a new fence, put in the new rail line and put in the piping system for the water loading facility.

14. The work moved quickly at the foundry site and in August 2012, I saw that the rail spur and 42 water pumps had been installed, one tanker length apart. In the middle of August, water trains started running.

15. Beginning in mid-August and continuing through mid-September, I heard train noises frequently, sometimes every night. I heard either the train whistle or the diesel engines themselves or both. The noise was so loud it woke me up and kept me awake repeatedly during that period. I spoke with my neighbor Teresa Flegal who lives on Chemung St. and was glad to learn that she was making measurements of the noise with a decibel meter.

16. The noise was much louder than the noise from other trains that run through the village. I am concerned that increased train noise will adversely impact my quality of life and home value.

17. I recently began testing the water coming from our tap for Total Dissolved Solids (TDS). I am using an HM Digital COM-100 combo meter. The HM Digital COM-100 meter measures electrical conductivity, total dissolved solids (TDS) and temperature. I used the TDS mode in my water quality testing. The results of my testing are attached as Exhibit B. While I understand that these values are slightly below the secondary Maximum Contaminant Level of 500 mg/l for TDS, I am concerned that increased water withdrawals may increase these values beyond this MCL and may, thus, pose a health problem for me and my wife. Furthermore, I am concerned about this because the cause of the relatively high TDS values I found has not been determined.

18. I was interested to read an article in the Corning Leader on December 13, 2012, about a village meeting the night before in which someone stated that only no water has been taken for sale

Sept. 30 and that only 10 million gallons have been taken for sale since operations began at the train loading facility. See Village's Future Debated at Packed Forum, Derrick Ek, *Corning Leader*, Dec. 13, 2012, pp. A1, attached as Exhibit C.

19. Yesterday, my daughter told me the reason why the trains have stopped running. She heard that it is because the water table has been drained so low it is causing problems.

I have personal knowledge of all facts set out in this affidavit.

John N. Maurin

Sworn to before me this 15th day of December 2012.

Rachel Treichler
Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

EXHIBIT A – GOOGLE MAP



EXHIBIT B – WATER TESTING TABLE

Exhibit B

Water Testing for Total Dissolved Solids by John Marvin on Charles, St., Painted Post, NY

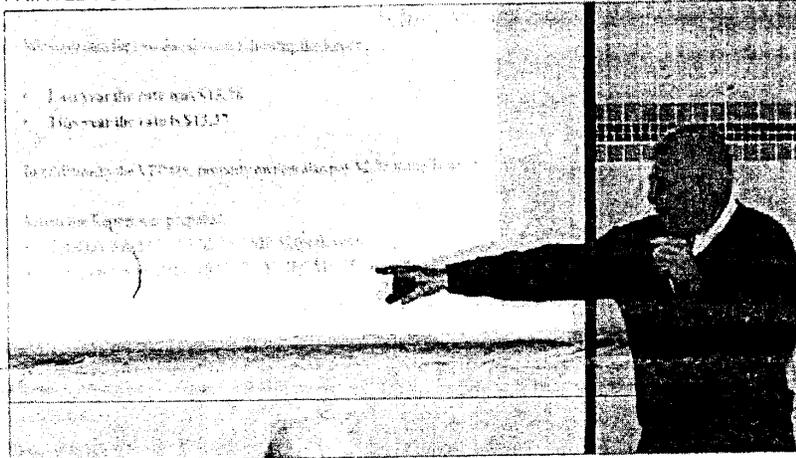
<u>Date</u>	<u>Address</u>	<u>Municipality</u>	<u>Temperature</u>	<u>TDS ppm</u>
11/03/12	240 Charles St.	Village of Painted Post	61.8	445
11/07/12	240 Charles St.	Village of Painted Post	58.6	435 inside
11/07/12	240 Charles St.	Village of Painted Post	47.6	402 outside
11/08/12	266 Charles St.	Village of Painted Post	63.6	450
11/08/12	264 Charles St.	Village of Painted Post	64.5	443

EXHIBIT C – NEWSPAPER ARTICLE



The LEADER

PAINTED POST DISSOLUTION VOTE APPROACHES



Whit Smith, an Erwin resident against the merger talks about changes to taxes. FRIC WENSEL/THE LEADER

Village's future debated at packed forum

By Derrick Ek
ek@the-leader.com

PAINTED POST | How much, exactly, will taxes drop? Will police and fire protection and other services be affected? Will life in Painted Post change at all?

With a vote set for Jan. 24 on whether to dissolve the village government and merge with the surrounding Town of Erwin, those were some of the key questions addressed

as several hundred people jammed the West High cafeteria for a forum that featured speakers both for and against.

Two very different visions were outlined.

Whit Smith, an Erwin resident and a member of Save Painted Post, argued for keeping the village government intact.

"Money is a big part of this conversation, but it's not just about the money," he said.

While the dissolution

vote was brought about by a petition drive under the state's Citizen Empowerment Act in response to years of high taxes in Painted Post, Smith noted that the tax rate in the village had dropped sharply this year, the result of significant cost-cutting measures recently implemented by village officials, he said.

And more potential sources of revenue could help even further, such

as the five-year contract recently signed by the village to sell municipal water for shale gas drilling in Pennsylvania, he noted.

Smith said his analysis of tax data showed the residents' tax rate wouldn't drop all that much if the village dissolved.

"This is a close-knit community," Smith said. "You have excellent

SEE PAINTED POST, A10

PAINTED POST

From Page A1

services by people who know you. Decisions get made on a local level. There's great community events and community spirit."

But Phyllis Draper, a longtime village resident and member of Painted-PostTaxRelief.org, which led the petition drive, sees things differently.

She said police and fire protection could still be provided, they would just operate differently, as special districts within the Town of Erwin. The police department might even be expanded to cover Erwin, too, she said. Other services, such as leaf pickup and road maintenance, would still be provided, just by the

town, she said.

Operating costs would be spread over a much larger, more stable tax base, she said.

And village residents could be elected to serve on the Erwin Town Board or as town supervisor, providing representation for the village, Draper said.

By her calculations, the amount village residents pay in taxes would drop a significant amount if Painted Post dissolved.

Recent cost-cutting measures weren't enough, Draper said.

"While these things will help, they are not going to be a long-term solution to the village's problems," she said.

Draper also cautioned residents that revenues from the water deal shouldn't be relied on too much, because sales can vary greatly depending on demand.

While the deal allows up to a million gallons of water to be sold daily, which would equate to roughly \$20 million over five years, only \$3.2 million is guaranteed, she said.

For example, only 10 million gallons have been taken since operations began at the tanker train loading facility this summer, and no water has been taken since Sept. 30, she said.

Also, the operation is currently being challenged in state Supreme Court by environmental groups and local residents who say the impact of withdrawing large amounts of water from the Corning aquifer, as well as the impact of trains running through the village, was not properly assessed.

A lot of people at Wednesday's meeting indicated in a show of hands they were still undecided on how to vote.

The process that led to

the Jan. 24 vote actually began back in 2009, when village officials began exploring ways to tackle financial woes.

In December 2010, the board hired a consultant, the Rochester-based Center for Governmental Research, to do a study on potential ways to deal with the financial problems. Three Rivers Development, a local economic development agency, paid \$58,000 to the consultant. A citizen committee was formed to assist in the study.

Following the study in January 2011, a merger with Erwin was recommended, but trustees never moved forward with dissolution.

A few months later, the village signed the water deal.

This year, Painted-Post-TaxRelief.org led the petition drive that forced the village board to set the vote.

AFFIDAVIT OF VIRGINIA HAUFF, IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[437-439]

1968940

STATE OF NEW YORK
 SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
 PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
 COALITION TO PROTECT NEW YORK; JOHN MARVIN;
 THERESE FINNERAN; MICHAEL FINNERAN;
 VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

AFFIDAVIT IN OPPOSITION
 TO RESPONDENTS' MOTION
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 SUMMARY JUDGMENT

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
 and Rules

Index No. 2012-0810CV

-against-

Justice Alex R. Renzi

THE VILLAGE OF PAINTED POST; PAINTED POST
 DEVELOPMENT, LLC; SWEPI, LP; and
 WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
 County of Steuben, ss.:

VIRGINIA HAUFF, being duly sworn, deposes and says:

1. I am a resident of the Village of Painted Post. I have lived at 116 Keefe Boulevard since 1952. I own the house in which I live, which is currently assessed at \$148,000.
2. I am 91 years old. I was born in 1921.
3. My drinking water is supplied by the Village of Painted Post. Pipes from the municipal water system run directly to my house.
4. If the Village of Painted Post municipal drinking water supply were to be diminished or contaminated, it could affect my health and make it difficult for me to continue living in my home. It could also reduce the value of my property. My neighbors and residents of the entire area served by the aquifer drawn on by the Village water system could

experience the same effects, which could have a negative effect on the overall economy of our area.

5. I am concerned about the future water supply of Painted Post both as to quantity and purity. Will the water become harder as more water is removed in such large quantities?
6. The water has always been hard. When we built our house in 1952 we had to put in filters and water softeners because the water looked dirty and discolored the laundry. We talked to our neighbors and everybody had to put in filters and water softeners. During the time we have lived here we have always had filters and water softeners on our water.
7. My visitors often comment that our water pressure is low compared to theirs.
8. If more water is withdrawn it may increase these problems.
9. I am also concerned that a comprehensive study of the impact of increased water withdrawals on the entire aquifer was not done before the town signed a water sale agreement.
10. My plumber came this morning to look at a leaky faucet and I spoke to him about having hard water and low water pressure. He told me that the low water pressure was due to scale build-up in the filter. My plumber did not remember exactly what elements in the water caused the hardness, so I called Larry Smith, the head of the Village Department of Public Works and talked to him about what makes our water hard. He said that it is iron and manganese and that these are not harmful to health. He said that the water is tested often by the NYS Department of Health and that it is within accepted levels. He said that it doesn't matter where in the Village you live, all water in the Village is treated the same. If there are changes in the water, he said, the Village adjusts its treatment processes accordingly.

I have personal knowledge of all facts set out in this affidavit.

Virginia B. Hauff

Sworn to before me this 18th day of December 2012.

Rachel Treichler

Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

**AFFIDAVIT OF RUTH YOUNG, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[440-447]**

1966942

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

State of New York,
County of Chemung, ss.:

RUTH YOUNG, being duly sworn, deposes and says:

1. I am the president of People for Healthy Environment, Inc. (PHE).
2. PHE is a New York State not-for-profit corporation, organized to advocate for the strengthening and effective enforcement of environmental and land use laws and regulations, and to assist communities, groups and individuals whose land, air, water, health, and quality of life may be subject to degradation by resource extraction activities. Protection of our local drinking water supplies is a key focus of PHE activities.
3. The membership of PHE is centered in the Elmira, New York area. Of the 60 members of the organization, 14 live in the City of Elmira, 15 live in the Town of Horseheads, two

live in the Town of Big Flats, and two live in the City of Corning. The other members live in surrounding communities.

4. The majority of our members live immediately downriver from the Corning aquifer and damage to the Corning aquifer may damage our drinking water supplies.

5. If our drinking water supplies were to be diminished or contaminated, it could affect our health and make it difficult for us to continue living in our homes. It could also reduce the value of our property. Our neighbors and residents of the entire area immediately downriver from the Corning aquifer could experience the same effects, which could have a negative effect on the overall economy of our area.

6. The drinking water for many of our members is supplied by three municipal water systems: the Elmira Water Board, the Village of Horseheads Water Department, and the Town of Big Flats Water Department. Pipes from these municipal water systems run directly to the houses of most of our members. Several of our members have private wells.

7. The water for the municipal water systems supplying our members is supplied by the Chemung River and by wells drawing on the groundwater in the Elmira-Horseheads-BigFlats aquifer, which is immediately downriver from the Corning aquifer.

8. Like the Corning aquifer, the Elmira-Horseheads-Big Flats Aquifer is a primary aquifer, one of only 18 in New York State. New York's primary aquifers are shown in Fig. 2.1 of the DEC's Draft Supplemental Generic Environmental Impact Statement (RDSGEIS) on hydraulic fracturing, page 2-21, attached hereto as Exhibit A. Primary aquifers have been designated by the NYS Department of Health to "enhance regulatory protection in areas where groundwater resources are most productive and most vulnerable." See the DEC website, Primary & Principal Aquifers, <http://www.dec.ny.gov/lands/36119.html>.

9. In recognition of the need for special protection of primary aquifers, the RDSGEIS provides that gas drilling will be prohibited within primary aquifers and within 500 feet of their boundaries. Why then should gas drilling companies be allowed to withdraw water from New York's primary aquifers and export it to Pennsylvania for the consumptive use of gas drilling?

10. According to the information provided on its website, the Elmira Water Board (EWB) delivers over 7 million gallons of water every day to more than 65,000 people in the City of Elmira, the Village of Elmira Heights, and portions of the towns of Elmira, Horseheads and Southport. Since 1889, the website states, the primary source of water for the EWB has been the Chemung River. In 2011 63.4% of the system's raw water came from the river. Wellfields Foster Island #40 and 41 contributed 10.5% and Hudson Street #1A and 2, contributed 25.8% of EWB's 2011's source water. The website also states that all raw, untreated water from the river, wells, and reservoir are blended before distribution. See <http://elmirawaterboard.org/>. EWB's 2011 Drinking Water report states that the well fields draw on the Elmira-Horseheads-Big Flats Aquifer (EHBF Aquifer). See Exhibit B.

11. As in the case of the Corning Aquifer, located immediately upriver, the Chemung River and the EHBF Aquifer are closely connected. The close connection of the Chemung River and the EHBF Aquifer is addressed in the 2011 drinking water quality reports of both the Town of Big Flats and the Village of Horseheads water systems.

12. The Town of Big Flats 2011 water quality report, attached hereto as Exhibit C, states that the water sources for the Big Flats water system are two 40-foot-deep wells and a 50-ft deep well. The system serves about 3,800 residential customers, the mall, four hotels and several shopping centers, through approximately 1500 service connections. The report notes that the source water assessment conducted by the NYS Department of Health (DOH) has rated the Big Flats wells as having a high susceptibility to microbials, nitrates, industrial solvents, metals and

other industrial contaminants, and that this is due in part because “the wells draw from an unconfined aquifer with high hydraulic conductivity.”

13. The Village of Horseheads 2011 water quality report, attached hereto as Exhibit D, states that the water source for the Village of Horseheads water system is ground water drawn from two fifty foot deep wells on Mill Street and a 70 foot deep well on Old Ithaca Road. Following the flooding in 2011, the Report states, the Old Ithaca Road well was re-classified from a ground water source to groundwater under the influence of surface water. The Horseheads water system serves 15,000 people through 3,612 service connections. The total water produced in 2011 was 714 million gallons. The daily average of water pumped into the system is 1.9 million gallons.

14. The report notes that the NYS DOH has completed a source water assessment for the Horseheads system, based on available information, and that the source water assessment rated the Horseheads wells as having a high to very high susceptibility to microbials, nitrates, industrial solvents, and other industrial contaminants. The report states that the rating was due in part to the fact that “the wells draw from an unconfined aquifer that yields or pumps greater than 100 gpm and doesn’t provide adequate protection from potential contamination.”

15. The report discusses the hardness of the water provided by the Horseheads system. “An often-asked question about our water system is how hard is our water. In chemical terms our waters average hardness is 210 mg/L or 12 gr/Gallon as CaCO₃, total dissolved solids is 150 mg/L, and Iron content is less than .050 mg/L. This means our water is very hard.”

16. One fact that concerns us in this case is the fact that the municipal water sale by the Village of Painted Post to SWEPI did not go through the same approval process by the SRBC that other water withdrawals in this area have gone through. Consequently, our members did not have an opportunity to offer comments on the merits of this withdrawal even though it is a withdrawal that could have significant impacts on our drinking water supplies and the economy of this region,

particularly if similar withdrawals are allowed with a similar lack of opportunity for public comment.

17. From our perspective, both the content of the approval issued by the SRBC to SWEPI to take water from the Painted Post municipal water system (the “Painted Post approval”) and the process followed by the SRBC in issuing the approval are quite mysterious.

18. It is particularly curious that the Painted Post approval seems to have been issued during a time when the SRBC has stated that no new water withdrawal permits for the consumptive use of gas drilling are being issued in New York (two renewal permits were issued in June 2012).

19. A comparison of the SRBC’s process for issuing the Painted Post approval to its process for issuing the approval to SWEPI to draw water from the Chemung River at Big Flats (the “Big Flats approval”) that was renewed in June 2012, shows many differences. The process for issuing the Big Flats approval was very public, the process for issuing the Painted Post approval was a complete secret.

20. The Big Flats approval was shown on the agenda for both the May 10, 2012, and the June 7, 2012, SRBC meetings as confirmed by the press releases for those meetings posted at <http://www.srbc.net/newsroom/NewsRelease.aspx?NewsReleaseID=84> and <http://www.srbc.net/newsroom/NewsRelease.aspx?NewsReleaseID=88>.

21. It was easy to comment on the Big Flats approval. The website that shows the agenda for each upcoming meeting, <http://www.srbc.net/pubinfo/projectapplications.htm>, contains an “Add Comment” link to submit written comments on specific project applications. Because the Big Flats approval was on the agenda, it was listed as a specific project application for which comments could be made.

22. In contrast to the Big Flats approval process, no notice that the Painted Post approval was pending was posted on the SRBC website, and there was no mechanism for commenting on the Painted Post approval on the SRBC website.

23. Another significant difference between the two approvals is demonstrated by the SRBC's actions during the low flow conditions we experienced in the Chemung River watershed this summer. In recognition of these low flow conditions, the SRBC suspended 37 permits in the Susquehanna River Basin on June 28, 2012, including two in the Chemung River, one of which was the Big Flats approval. See SRBC Press Release, "37 Water Withdrawals for Natural Gas Drilling and Other Uses Suspended to Protect Streams," June 28, 2012, which stated, "The Susquehanna River Basin Commission (SRBC) today announced that 37 separate water withdrawals approved by SRBC are suspended due to localized streamflow levels dropping throughout the Susquehanna basin." . SWEPI's Big Flats approval was first on the list of suspended withdrawals, <http://www.srbc.net/newsroom/NewsRelease.aspx?NewsReleaseID=89>. On July 16, 2012, the SRBC issued a second press release expanding the list of withdrawals suspended due to low streamflow levels to 64. Again, SWEPI's Big Flats were first on the list. <http://www.srbc.net/newsroom/NewsRelease.aspx?NewsReleaseID=90>.

24. In contrast, during the time the Big Flats withdrawals were suspended, SWEPI's Painted Post water withdrawals began at the end of August.

25. A substantial amount of information is available on the SRBC website for the Big Flats approval. None is available on the website for the Painted Post approval.

26. Unlike SWEPI's Big Flats approval, SWEPI's Painted Post approval is not referenced on the SRBC's Water Resource Project Location Map, <http://www.srbc.net/wrp/Map.aspx?ID=8138>. If one goes to the SRBC water resource portal project search webpage, <http://srbc.net/wrp/Search.aspx>, and searches for SWEPI LP projects, the

Big Flats approval comes up with a substantial amount of information about the approval. The Painted Post approval does not come up in such a search.

27. The following information about the Big Flats approval is posted at <http://srbc.net/wrp/Details.aspx?ID=8119&num=2011-140> and there is a link at the bottom of the page to view a PDF of the actual approval issued:

Approval Number:	20120616
Pending Number:	2011-140
Type:	Surface Water
Approval Date:	06/07/2012
Expiration Date:	06/06/2016
Project Sponsor:	SWEPI LP
Facility Name:	Chemung River - Big Flats
NAICS Description:	211111 - Crude Petroleum and Natural Gas Extraction
Municipality:	Big Flats Town
County:	Chemung
State:	NY
Application Status:	Approved
Project Status:	Active

28. No equivalent information is available for the Painted Post approval on the SRBC website. The only indication on the SRBC website that an approval has been issued for the Painted Post withdrawals is that the Village of Painted Post shows on the list of approved water sources for SWEPI. But there is no docket number, no date for the issuance of the approval, no statement of the amounts approved and opportunity to view the actual approval issued.

29. We urge that sufficient steps be taken to ensure that the Chemung River remains a source of clean and healthy drinking water. It concerns us to see that the Susquehanna River was designated America’s “Most Endangered” River by American Rivers in 2011. As the withdrawals at issue in this case show, the watershed of the Chemung River itself faces greater pressure than ever before, with hydrofracturing contributing to the threats to both its water quality and quantity. New York State must make sure that our waters are protected.

I have personal knowledge of all facts set out in this affidavit.

Ruth J. Young

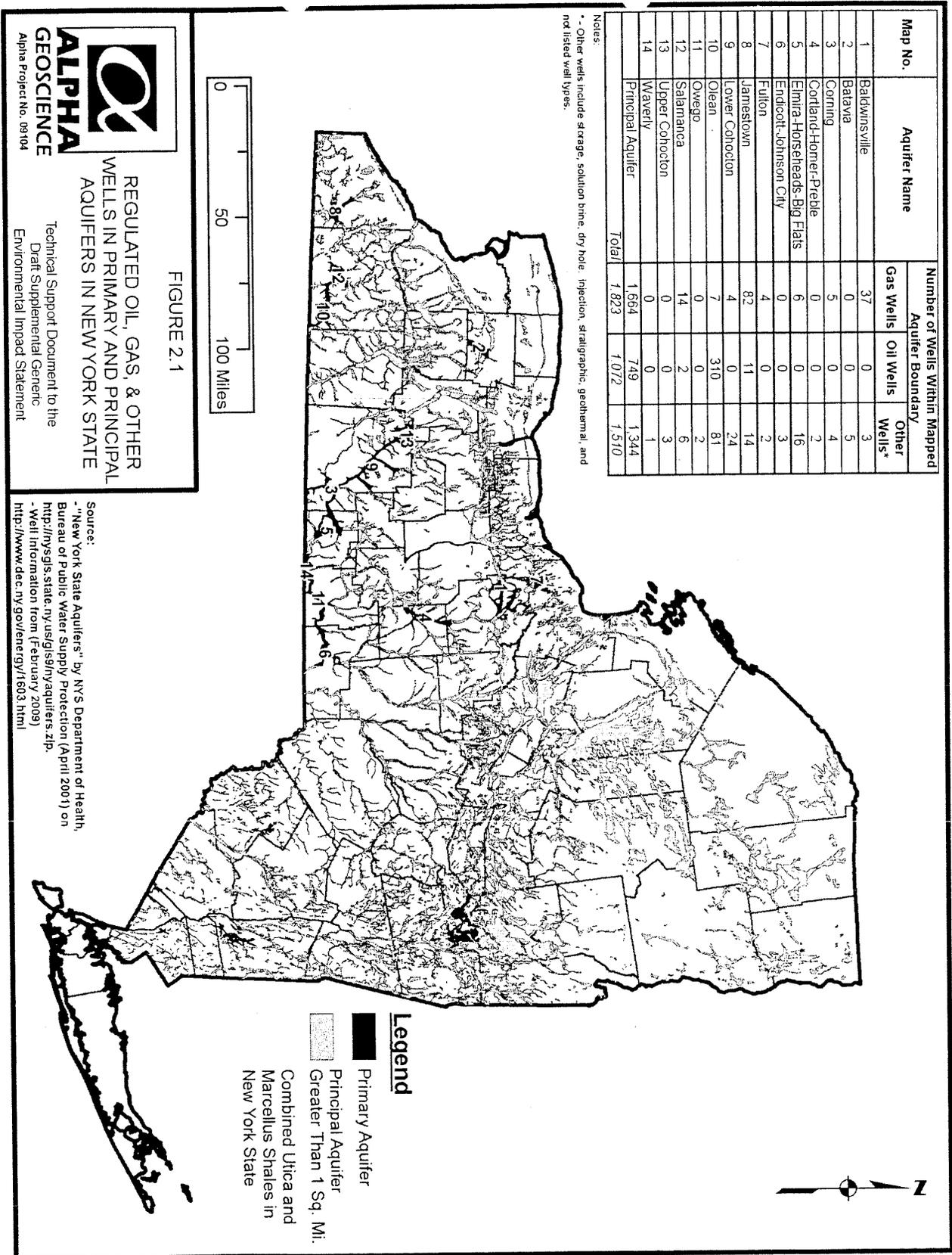
Sworn to before me this 18th day of December 2012.

Rachel Treichler

Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

EXHIBIT A – PORTION OF REVISED DRAFT SGEIS 2011



Map No.	Aquifer Name	Number of Wells Within Mapped Aquifer Boundary		
		Gas Wells	Oil Wells	Other Wells*
1	Baldwinsville	37	0	3
2	Balavia	0	0	5
3	Corning	5	0	4
4	Corland-Homer-Preble	0	0	2
5	Elmira-Horseheads-Big Flats	6	0	16
6	Endicott-Johnson City	0	0	3
7	Fulton	4	0	2
8	Jamestown	82	11	14
9	Lower Cohocton	4	0	24
10	Olean	7	310	81
11	Owego	0	0	2
12	Salamanca	14	2	6
13	Upper Cohocton	0	0	3
14	Waverly	0	0	1
	Principal Aquifer	1,664	749	1,344
	Total	1,823	1,072	1,510

Notes:
 * - Other wells include storage, solution mine, dry hole, injection, stratigraphic, geothermal, and not listed well types.

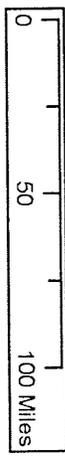


FIGURE 2.1

ALPHA
GEOSCIENCE

REGULATED OIL, GAS, & OTHER WELLS IN PRIMARY AND PRINCIPAL AQUIFERS IN NEW YORK STATE

Technical Support Document to the Draft Supplemental Generic Environmental Impact Statement

Alpha Project No. 09104

Legend

- Primary Aquifer
- Principal Aquifer Greater Than 1 Sq. Mi.
- Combined Utica and Marcellus Shales in New York State

Source:
 - "New York State Aquifers" by NYS Department of Health, Bureau of Public Water Supply Protection (April 2001) on <http://nysgs.state.ny.us/gis/ny/aquifers.zip>.
 - Well information from (February 2009) <http://www.dec.ny.gov/energy/1603.html>

EXHIBIT B – ELMIRA WATER BOARD DRINKING WATER REPORT [449-450]



Annual Drinking Water Quality Report
2011
(Issued February 2012)

PWSID #NY0701008

Dear Elmira Water Board Customer:

This publication contains a summary of the quality of the water provided to you during the past year. Federal and state requirements set the measuring standards by which we are evaluated. In 2011, the EWB met or exceeded all federal and state requirements.

By reading this report you will learn where your water comes from, what it contains, and how it compares to state standards. Information is also provided on our capital improvement projects for 2011.

In the right-hand column, you will find the source water assessment information prepared by the New York State Department of Health. The importance of maintaining a safe water source free of pollution is explained.

We are proud to report that your tap water meets all water quality standards established by federal and state regulations. The Elmira Water Board's lab conducts daily sampling and testing to ensure that the water delivered to your home is safe. Outside laboratories are also used to test for various contaminants. The effectiveness of our treatment process is confirmed in the testing results, where no violations were found.

The task of being good stewards of our water must belong to every citizen in our community. Nothing less should be acceptable for our children and those who will inherit the results of our efforts.

The staff and management of the Elmira Water Board remain committed to doing our best to maintain high water quality for you and your family. We look forward to serving your water needs in 2012.

EWB Statistics	
Average Daily System Use	5.5 Million Gallons
Total Water Produced	2,020 Billion Gallons
Population Served	65 Thousand
Unaccounted For Water	14.3%
Accounts	17,453
Average Annual Residential Use	55,352 Gallons
Average Annual Residential Bill	\$294.83
Miles Of Water Main	225 Miles
Number Of Hydrants	1,247

Elmira Water Board Directory	
Mark D. LaDouce, General Manager	733-9179
Main Office	733-9179
Monday through Friday 9:00 AM to 4:00 PM customer service & billing information	
Danny Gray, Chief Water Treatment Operator	732-2277
Filtration Plant	732-2277
24/7 water quality questions & to report an emergency	
Elmira Water Board Website	www.elmirawaterboard.org
Public Elmira Water Board Meetings 1 Fountain Drive, Elmira, NY	733-9179
Call Main Office for dates and times	
Other Important Water Numbers	
Chemung County Health Department	737-2019
To answer water questions	
Chemung County Health Department Website (click on the environmental tab to view the drinking water page)	www.chemungcountyhealth.org
Environmental Protection Agency	1-800-426-4791
Safe Drinking Water Hotline	

INFORMATION ON CONTAMINANTS AND
THEIR POTENTIAL HEALTH EFFECTS
Important! Educational Information If You Are
Immunocompromised or Have an Infant

Although our drinking water meets or exceeds state and federal regulations, some people may be more vulnerable to contaminants in drinking water than the general population. Immunocompromised persons are especially at risk. Such persons can be, for example: persons with cancer undergoing chemotherapy; persons who have undergone organ transplants; persons with HIV/AIDS or other immune system disorders; the elderly and infants can be particularly at risk of infections. These people should seek advice about drinking water from their health care providers. Environmental Protection Agency (EPA)/Center for Disease Control (CDC) guidelines on appropriate means to lessen the risk of infection by cryptosporidium and other microbiological contaminants are available from the EPA's Safe Drinking Water Hotline (1-800-426-4791). Please call our office if you have questions.

All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (1-800-426-4791). As a precautionary measure, all customers are urged to flush their cold water taps each morning, 30 seconds to 2 minutes to remove contaminants that may come from household pipes.

Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. Filtration and disinfection are the best methods for guarding against microbiological contaminants, although a 100% removal or inactivation cannot be guaranteed. We at the Elmira Water Board have installed adequate filtration and disinfecting equipment for proper and effective treatment of our water.

Drinking Water Sources

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial, inorganic, pesticides and herbicides, organic, chemical, and radioactive.

In order to ensure that tap water is safe to drink, the state and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDAS regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

Since 1889 the primary source of water for the EWB has been the Chemung River. In 2011, 61.4% of our raw water came from the river, Wellfields, Foster Island #40 & 41 (the use of well #42 was discontinued in 2006) contributed 10.5% and Hudson Street #1A & 2, contributed 28.1% of 2011's source water. The first EWB water source (in a 1872) was the Hoffman Reservoir, which is now used on a standby basis and provided .3% of our raw water in 2011.

Instead of using any one source alone, all raw (untreated) water from the river, wells, and reservoir are blended to provide a better water product. By utilizing modern technology in our treatment and disinfection process, our Filtration Plant consistently exceeds state standards and assures a high margin of safety.

2011 WATER SYSTEM IMPROVEMENTS

- ★ Replaced 4,800 ft. of older small diameter cast iron water main
- ★ Replace/upgrade lab equipment & instrumentation
- ★ Purchased 1 pickup truck
- ★ Repair intake sites in Chemung River
- ★ Upgrade of Main Office lobby & customer area
- ★ Network upgrades of software & equipment
- ★ Purchased Loader Backhoe, air compressor, & road saw for water main replacement

2012 WATER SYSTEM PLANNED IMPROVEMENTS

- ★ Replace 6,000 ft. of small diameter cast iron water main
- ★ Replace turbidity meters at Pump Station & Filter Plant
- ★ Upgrade of Main Office staff areas
- ★ Upgrade financial software package and routine computer replacement
- ★ Water meter replacement project
- ★ Continued fiduciary diligence by preserving the EWB's fiscal health

Source Water Assessment Summary
Elmira Water Board #NY0701008
January 19, 2005

The NYS DCH has completed a source water assessment for the Elmira Water Board, based on available information. Possible and actual threats to multiple drinking water sources were evaluated. The state source water assessment includes a susceptibility rating based on the risk posed by each potential source of contamination and how easily those contaminants can move about. The susceptibility rating is an estimate of the potential for contamination of the source water; it does not mean that the water delivered to consumers is, or will become, contaminated. See page 2 of this report for a list of the contaminants that have been detected. The source water assessments provide source managers with additional information for protecting source waters into the future.

The assessment found an elevated susceptibility to contamination for the surface water sources, the Chemung River and Hoffman Reservoir. The amount of agricultural lands in the assessment area results in elevated potential for herbicide and pesticide contamination. While there are some facilities present, permitted discharges do not likely represent an important threat to source water quality based on their density in the assessment area. However, it appears that the total amount of wastewater discharged to surface water in this assessment area is high enough to further raise the potential for contamination (particularly for pesticides). There are no noteworthy contamination threats associated with other discrete contaminant sources. Finally, it should be noted that relatively high flow velocities make river and reservoir drinking water supplies highly sensitive to existing and new sources of microbial contamination.

The assessment of the five active wells found them to have a medium-high to high susceptibility to microbial, nitrate, industrial solvents, and other industrial contaminants. These ratings are due primarily to the close proximity of industrial/commercial facilities that discharge wastewater into the environment and low intensity residential activities in the assessment area.

Please note that water from all the sources is blended and treated at the filtration plant to provide disinfection and to remove contaminants. There are also wellhead protection rules in place for the wells, and watershed protection rules for the Hoffman Reservoir. These rules give legal authority to forbid activities and discharges that could cause gross contamination in these sources.

Why Water Conservation Is Part of "Going Green"

Only 3% of the world's water is fresh water, and of this 2/3 is stored in ice caps and glaciers. That leaves only 1% of the world's water available for drinking. "Going green" means protecting our water against the constant threat of pollution and conserving our usage.

Save Energy:

Reduce usage of hot water, washing machine, dishwasher, etc., if possible, replace existing high energy consuming appliances.

Save the Environment:

Landscape with plants that require little water, water the lawn less frequently (before dawn/after sunset), try catching rain water for outdoor usage. Look for nontoxic alternatives for household products. Avoid using garbage disposals (try to compost food waste), putting food waste, oils, and grease down the drain burdens water treatment plants and affects aquatic life and water quality downstream.

Save Money:

Water conservation will lower your water bill, sewer tax, and energy costs.

We are fortunate to have an abundant local water supply; future generations will judge us on how we protected and preserved it.

Water Chemistry Definitions, Terms, & Abbreviations

Action Level (AL): The concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system must follow.

< " = less than

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLG as possible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Maximum Residual Disinfectant Level (MRDL): The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

Maximum Residual Disinfectant Level Goal (MRDLG): The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contamination.

"N/A" = not applicable. Not related to the matter described.

Nephelometric Turbidity Unit (NTU): Measure of the clarity of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

Parts per million (ppm): Corresponds to one part of liquid in one million parts of liquid.

Parts per billion (ppb): Corresponds to one part of liquid in one billion parts of liquid.

pH units: A measure of acidity or alkalinity of the water.

Promotes per liter (PCL/L): A measure of the radioactivity in water. Treatment Technique (TT): A required process intended to reduce the level of a contaminant in drinking water.

Detected Substances

In 2011, we tested for over 200 contaminants. The table that follows shows the substances that were detected. None of these contaminants exceeded the regulatory levels established by the EPA and New York State.

To obtain more information on the details of the non-detected contaminants, please visit our website www.elmirawaterboard.org or your Steele Memorial Public Library Downtown Elmira Branch for a copy of the Recent Analytical Results and Sample Plan for the distribution system.

Table of Detected Contaminants

Contaminant	Violation Yes/No	Date of Sample	Level Detected	Units of Measure	MCLG	Regulatory Limit (MCL)	Likely Source of Contamination
Inorganic Contaminants:							
Barium	no	4/25/2011	0.08	ppm	2	2	Erosion of natural deposits
Chloride	no	In 2011: daily	High 90 Low 62 Average 76	ppm	n/a	250	Naturally occurring; use of road salt; seasonal salt brine discharge by natural gas storage facilities.
Lead	no	June 2011	*90th % 3.8 High 7.8 Low <.5	ppb	0	AL=15	Corrosion of household plumbing systems, erosion of deposits
*90th Percentile: Out of 30 samples tested 90% of the samples had a lead concentration of 3.8 ppb or less with 0 samples exceeding the 15 ppb action level (AL)							
Copper	no	June 2011	*90th % .05 High .12 Low .004	ppm	1.3	AL=1.3	Corrosion of household plumbing systems
*90th Percentile: Out of 30 samples tested 90% of the samples had a copper concentration of .05 ppm or less with 0 samples exceeding the 1.3 ppm action level (AL)							
Fluoride	no	In 2011: daily	High .89 Low .54 Average .70	ppm	n/a	2.2	Water additive which promotes strong teeth
Nitrates	no	4/25/2011	0.62	ppm	10	10	Runoff from fertilizer use
Sodium	no	8/25/2011	40	ppm	n/a	no designated limits	Naturally occurring; use of road salt
Sodium: Water containing more than 20 ppm of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 ppm of sodium should not be used for drinking by people on moderately restricted sodium diets. Sodium in excess could cause problems for individuals with hypertension.							
Nickel	no	4/25/2011	1.4	ppb	n/a	n/a	Discharge from factories; corrosion of plumbing fixtures
Organic Contaminants: Volatile Organic Carbons							
MTBE (Methyl tert-Butyl Ether)	no	In 2011: 4/25, 8/25, 11/19	1 <0.5 <0.5	ppb	n/a	5	Releases from gasoline storage tanks; atmospheric deposition
Radioactive Contaminants:							
Gross Alpha	no	7/1/2010	0.65	pCi/L	0	15	Erosion of natural deposits
Radium 226	no	7/1/2010	0.23	pCi/L	0	226 & 228 combined has an MCL of 5	Erosion of natural deposits
Radium 228	no	7/1/2010	0.0	pCi/L	0		
New York State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently. For this reason some of our data, though representative, is more than one year old.							
Disinfection By-Products:							
Total Organic Carbon (TOC) Source	no	In 2011: monthly	High 2.7 Low 1.3 Average 2.0	ppm	n/a	n/a	Naturally occurring organic materials from decaying leaves & plants
Total Organic Carbon (TOC) Treated	no	In 2011: monthly	High 1.7 Low 1 Average 1.4	ppm	TT	TT	Source same as above, treated samples measure the effectiveness of our water treatment process
Total Trihalomethane (TTHM) *RAA (Running Annual Average): average of last 4 quarters	no	In 2011: 3/1, 6/1, 8/26, 11/15	Quarterly Individual Samples High 96 Low 16	ppb	n/a	*RAA Quarterly Average 80	By-product of drinking water chlorination needed to kill harmful organisms; formed when source water contains large amounts of organic matter.
Haloacetic Acids (HAA) *RAA (Running Annual Average): average of last 4 quarters	no	In 2011: 3/1, 6/1, 8/29, 11/15	Quarterly Individual Samples High 36 Low 9	ppb	n/a	*RAA Quarterly Average 60	By-product of drinking water chlorination needed to kill harmful organisms
Microbiological Contaminants:							
*Turbidity after purification plant	no	In 2011: every 4 hours	100% of 2,190 results < 0.3	ntu	n/a	TT=0.3	Soil runoff
*Turbidity is a measure of the cloudiness of the water. We monitor it because it is a good indicator of the effectiveness of our filtration system.							
Turbidity at customer tap	no	In 2011: daily	High .89 Low .04 Average .10	ntu	n/a	TT=5	Suspended particles in water from piping
Chlorine	no	In 2011: daily	High 1.16 Low .24 Average .76	ppm	MRDLG 4.0	MRDL 4.0	Level of disinfectant necessary for control of microbial contaminants
Corrosion Control Treatment:							
Orthophosphate	no	In 2011: daily	High 1.26 Low .95 Average 1.08	ppm	n/a	TT=0.5-5.0	Water additive for corrosion control
pH	no	In 2011: daily	High 8.0 Low 7.7 Average 7.8	pH units	n/a	TT=>7.4	A pH value below 7 can release metals like lead from household plumbing, while a level above 7 reduces corrosion
Alkalinity	no	In 2011: daily	High 128 Low 94 Average 112	ppm	n/a	TT=>39	Water additive for corrosion control
In 2011, over 3,000 total water samples were taken with no violations found!							

EXHIBIT C – TOWN OF BIG FLATS WATER QUALITY REPORT [451-457]**Annual Drinking Water Quality Report for 2011**

Town of Big Flats Water Districts 2 and 3
Public Water Supply ID# 0701011 and 0701006

March 2012

To comply with State regulations, the Town of Big Flats is issuing its annual report describing the quality of your drinking water. The purpose of this report is to raise your understanding of drinking water and awareness of the need to protect our drinking water sources. This report provides an overview of last year's water quality. Included are details about where your water comes from, what it contains, and how it compares to State standards.

If you have any questions about this report or concerning your drinking water, please contact John Dufresne, Water Systems Supervisor at 607-562-8443, extension 212. Please feel free to attend our Water Board meetings. They are held the 4th Wednesday of the month at 7pm at the Town Hall.

Where does our water come from?

In general, the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants. In order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDA's regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

Our water sources are two 40-foot-deep wells and a 50-ft deep well. Our system is interconnected so all 3 wells serve Districts 2 & 3 in some capacity. We maintain the proper level of disinfection against microbial contaminants as determined by our chlorine residual sample results that fall within the acceptable range of 0.20 mg/L to .92 mg/L. Districts 2 & 3 serve about 3800 people through 1100 residential service connections. During 2011 we limited use of our District 2 wells.

Due to flooding experienced in September 2011 the Carpenter Road wells were shut down as a precautionary measure. Testing of the untreated well water after the flood event showed the presence of e. coli, so the wells were not used again until the pollution abated. We have upgraded our treatment controls to meet new State disinfection standards that protect against any bacteria and viruses that might wash into the water table during exceptional rains.

Facts and Figures

Our water system serves about 3,800 residential customers, the mall, four hotels and several shopping centers, through approximately 1500 service connections. Our three wells produced 190.92 million gallons of water in 2011. We pumped an average of 523,307 gallons of water into our system everyday. On our highest single day we pumped a total of 967,000 gallons into the system.

Approximately 89% of the water pumped from these three wells was billed directly to customers. This information is based on the 2011 customer billing records. Another 2% was identified as being used for street sweeping, tank emptying and repaired leaks. The balance, 9%, was used for fire fighting purposes, hydrant flushing, distribution system leaks, including main breaks and service leaks and unauthorized use. We repaired five leaks in the system in 2011.

The average residence uses about 15,000 gallons each billing quarter. This results in an annual bill of \$148 for 60,000 gallons.

The water department's two storage tanks were sandblasted and repainted, one at a time, in 2011 as part of our long term maintenance schedule.

Improvements to the system are always on the table. Currently we are looking at a SCADA system.

Source Water Assessment Program (SWAP)

The NYS DOH has completed a source water assessment for this system, based on available information. Possible and actual threats to this drinking water source were evaluated. The state source water assessment includes a susceptibility rating based on the risk posed by each potential source of contamination and how easily contaminants can move through the subsurface to the wells. The susceptibility rating is an estimate of the potential for contamination of the source water, it does not mean that the water delivered to consumers is, or will become contaminated. See section "Are there contaminants in our drinking water?" for a list of the

contaminants that have been detected. The source water assessments provide resource managers with additional information for protecting source waters into the future.

As mentioned before, our water is derived from 3 drilled wells. The source water assessment has rated these wells as having a high susceptibility to microbials, nitrates, industrial solvents, metals and other industrial contaminants. These ratings are due primarily to the close proximity of a permitted discharge facility (industrial/commercial facilities that discharge wastewater into the environment and are regulated by the state and/or federal government); a toxic chemical release facility; and agricultural land in relation to the wells. In addition, the wells draw from an unconfined aquifer with high hydraulic conductivity. Please note that, while the source water assessment rates our wells as being susceptible to microbials, our water is disinfected to ensure that the finished water delivered into your home meets the New York State drinking water standards for microbial contamination. A copy of this assessment, including a map of the assessment area, can be obtained by contacting us.

Are there contaminants in our drinking water?

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, and synthetic organic compounds. The table presented below depicts which compounds were detected in your drinking water. The State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently.

It should be noted that all drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the Chemung County Health Department at 737-2019.

Contaminants Detected in 2011 (or latest test)

Definitions used in the table:

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Action Level (AL): The concentration of a contaminant, which, if exceeded, triggers treatment or other requirements, which a water system must follow.

Milligrams per liter (mg/l): Corresponds to one part of liquid in one million parts of liquid (parts per million - ppm).

Micrograms per liter (ug/l): Corresponds to one part of liquid in one billion parts of liquid (parts per billion - ppb).

Not Detected (N/D): The contaminant was not detected in the laboratory test.

Not Applicable (N/A):

Picocuries per liter (pCi/L): A measure of radioactivity in water.

Distribution System

Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit Measure -ment	MCLG	Regulatory Limit MCL (AL)	Likely Source of Contamination
Trihalomethanes	N	8/10 2 Samples	Avg 19.2 Range 17.5 - 20.9	ug/L	N/A	80	By-product of drinking water chlorination
Haloacetic Acids	N	8/10 2 Samples	Avg 5.3 Range 3.7 - 6.9	ug/L	N/A	60	By-product of drinking water chlorination
Lead 20 samples Note 1	N	7/10	90 th %=5 Range 0.8 - 9.3	ug/L	0	15 (AL)	Corrosion of household plumbing
Copper 20 Samples Note 1	N	7/10	90 th % = .14 Range .04 - .17	mg/L	1.3	1.3 (AL)	Corrosion of household plumbing

Note 1: The 90th Percentile (90th %) means that 90% of the results were less than or equal to the number reported. No samples exceeded the action level for lead or copper. Infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of

materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested and flush your tap for 30 seconds to 2 minutes before using tap water. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

Consumer Square Well

Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit Measure-ment	MCLG	Regulatory Limit MCL (AL)	Likely Source of Contamination
Arsenic	N	3/09	0.7	ug/L	N/A	10	Naturally occurring
Barium	N	3/09	0.12	Mg/L	2	2	Erosion of natural deposits.
Flouride	N	3/09	0.31	Mg/L	2.2	2.2	Naturally occurring
Nitrate	N	1/11	0.91	mg/L	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage;
<i>1 sample</i>							
Sodium	N	3/09	61	mg/L	N/A	Note 2	Naturally occurring; Road salt; Water softeners; Animal waste.
1,1,1-Trichloroethane	N	2011- Qrtrly 4 Samples	Average 1.13 Range 0.90 – 1.4	ug/L	5	5	Industrial solvent used for cleaning & degreasing.

Note 2: Water containing more than 20 mg/l of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/l of sodium should not be used for drinking by people on moderately restricted sodium diets.

District 2 Wells

Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit Measure-ment	MCLG	Regulatory Limit MCL (AL)	Likely Source of Contamination
Barium 2 Samples	N	6/11	Average 0.138 Range 0.122 – 0.154	mg/L	2	2	Erosion of natural deposits.
Cyanide 3 Samples <i>Note 3</i>	N	6/11	Average 0.096 ND – 0.269	mg/l	0.2	0.2	Anticaking agent in road salts and deicing products; fumigant for burrowing animals and yellow jackets.
Nitrate <i>Note 4</i>	N	2011 8 samples	Average 5.88 Range 4.48 – 7.57	mg/L	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage
Radium 228	N	8 samples in 2008	Average .5 Range .06-1.7	PCi/L	0	5 (Total of all radium forms)	Naturally occurring
Sodium 2 samples	N	8/11	39.25 Range 34.8 – 43.7	mg/L	N/A	Note 5	Naturally occurring; Road salt; Water softeners; Animal waste.

Note 3: WD2 operates two wells in an isolated agricultural area. In June 2011, cyanide was detected in one well, but not in the neighboring well. A check sample collected immediately after we received the initial report showed no trace of cyanide. The average of the samples was less than the maximum allowed by the State, so a violation did not occur. Because results were irregular, we suspect a problem with the sampling or measurement procedure.

Note 4: Because water from our Carpenter Road wells sometimes contains nitrate at levels above one-half of the maximum allowed, we must present the following information. Note that Big Flats has not exceeded the maximum level allowed for nitrate since 1995.

Nitrate in drinking water at levels above 10 mg/l is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant, you should ask for advice from your health care provider.

Note 5: Water containing more than 20 mg/l of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/l of sodium should not be used for drinking by people on moderately restricted sodium diets.

What does this information mean?

As you can see by the table our system had no violations in 2011. We have learned through our testing that other contaminants have been detected; however, these contaminants were detected below the level allowed by the State.

Is our water system meeting other rules that govern operations?

Our system was in compliance with all state regulations.

Do I need to take special precautions?

Some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium, Giardia and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

Harris Hill Manor (Big Flats Water District #4)

Public Water Supply ID# 0701005

To comply with State regulations, the Town of Big Flats is issuing its annual report describing the quality of your drinking water. The purpose of this report is to raise your understanding of drinking water and awareness of the need to protect our drinking water sources. Last year your tap water met all State drinking water health standards. We are proud to report that our system has never violated a maximum contaminant level or any other water quality standard. This report provides an overview of last year's water quality. Included are details about where your water comes from, what it contains, and how it compares to State standards. If you have any questions about this report or concerning your drinking water, please contact John Dufresne, Water Systems Supervisor at 607-562-8443, extension 212. Please feel free to attend our Water Board meetings. They are held the 4th Wednesday of the month at 7pm at the Town Hall.

Where does our water come from?

In general, the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants. In order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDA's regulations establish limits for contaminants in bottled water which must provide the same protection for public health. Our water source is a 107-foot deep well. We maintain the proper level of disinfection against microbial contaminants as determined by our chlorine residual sample results that fall within the acceptable range of 0.31 mg/L to 0.59 mg/L. Our water system serves about 200 people through 77 service connections. During 2011, our system did not experience any restriction of our water source.

Are there contaminants in our drinking water?

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, turbidity, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, total trihalomethanes, and synthetic organic compounds. The table presented below depicts which compounds were detected in your drinking water. The State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently.

It should be noted that all drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the Chemung County Health Department at 737-2019.

Contaminants Detected in 2011 (or most recent test)
District 4 Well

Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit Measurement	MCLG	Regulatory Limit MCL (AL)	Likely Source of Contamination
Gross Alpha Activity	N	2/10	1.8	pCi/L	0	15	Naturally occurring.
Barium	N	5/09	0.07	mg/L	2	2	Erosion of natural deposits.
Nitrate	N	1/11	0.58	mg/L	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage
Radium, total	N	2/10	1	PCi/L	0	5	Naturally occurring.

Distribution System

Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit Measurement	MCLG	Regulatory Limit MCL (AL)	Likely Source of Contamination
Copper 5 samples Note 2	N	6/10	90 th Percentile 0.1 Range 0.06–0.1	mg/L	1.3	AL = 1.3	Corrosion of household plumbing
Lead 5 samples Note 2	N	6/10	90 th Percentile 2.60 Range 0.5–3.4	ug/L	0	AL = 15	Corrosion of household plumbing
Haloacetic acids	N	8/10	4.6	ug/L	N/A	60	By product of drinking water chlorination needed to kill harmful organisms.
Trihalomethanes	N	8/10	20.8	ug/L	N/A	80	By-product of drinking water chlorination needed to kill harmful organisms.

Note 2: The number reported is the 90th Percentile. This means that 90 percent of homes tested were less than or equal to the level reported. We conducted one round of testing in 2010. No samples exceeded the action level for lead or copper. We remind you that infants and young children are typically more vulnerable to lead in drinking water than the general population. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. If you are concerned about elevated lead levels in your home's water, you may wish to have your water tested. You can also flush your faucet for 30 seconds to 2 minutes each morning and after long periods of no use to remove corrosion products. Never consume water from a hot water tap. Additional information is available from the Safe Drinking Water Hotline (800-426-4791).

Definitions used in the table:

Maximum Contaminant Level (MCL): Highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Action Level (AL): Concentration of a contaminant, which, if exceeded, triggers treatment or other requirements, which a water system must follow.

Milligrams per liter (mg/l): Corresponds to one part of liquid in one million parts of liquid (parts per million - ppm).

Micrograms per liter (ug/l): Corresponds to one part of liquid in one billion parts of liquid (parts per billion - ppb).

Picocuries per liter (pCi/l): A measure of radioactivity in water.

Not Detected (ND): The contaminant was not detected in the laboratory test.

Not Applicable (N/A)

What does this information mean?

As you can see by the table, our system had no violations. We have learned through our testing that some contaminants have been detected; however, these contaminants were detected below the level allowed by the State.

Is our water system meeting other rules that govern operations?

During 2011, our system exceeded all applicable state requirements

Source Water Assessment Program (SWAP)

The NYS DOH has completed a source water assessment for this system, based on available information. Possible and actual threats to this drinking water source were evaluated. The state source water assessment includes a susceptibility rating based on the risk posed by each potential source of contamination and how easily contaminants can move through the subsurface to the wells. The susceptibility rating is an estimate of the potential for contamination of the source water, it does not mean that the water delivered to consumers is, or will become contaminated. See section "Are there contaminants in our drinking water?" for a list of the contaminants that have been detected. The source water assessments provide resource managers with additional information for protecting source waters into the future.

As mentioned before, our water is derived from 1 drilled well. The source water assessment has rated this well as having a medium-high susceptibility to microbials. While no significant sources of contamination have been identified in the assessment area, the well draws from an unconfined aquifer with high hydraulic conductivity. Please note that while the source water assessment rates our well as being susceptible to microbials, our water is disinfected to ensure that that the finished water delivered into your home meets the New York State drinking water standards for microbial contamination.

County and state health departments will use this information to direct future source water protection activities. These may include water quality monitoring, resource management, planning, and education programs. A copy of the assessment, including a map of the assessment area, can be obtained by contacting us.

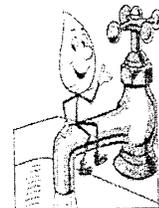
Do I need to take special precautions?

Although our drinking water met or exceeded state and federal regulations, some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium*, *Giardia* and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

How can I help save water?

Saving water lessens the strain on the water system during a dry spell or drought. You can play a role in conserving water by becoming conscious of the amount of water your household is using, and by looking for ways to use less whenever you can. It is not hard to conserve water. Conservation tips include:

- ◆ Check every faucet in your home for leaks. Just a slow drip can waste 15 to 20 gallons a day. Fix the leak and you can save almost 6,000 gallons per year.
- ◆ Check your toilets for leaks by putting a few drops of food coloring in the tank, watch for a few minutes to see if the color shows up in the bowl. It is not uncommon to lose up to 100 gallons a day from one of these otherwise invisible toilet leaks. Fix it and you save more than 30,000 gallons a year.
- ◆ Use your water meter to detect hidden leaks. Simply turn off all taps and water using appliances, then check the meter after 15 minutes, if it moved you have a leak.



Closing

Please help us protect our Water System by reporting any suspicious activity to the Police and the Town of Big Flats Water Department.

Thank you for allowing us to continue to provide your family with quality drinking water this year. We ask that all our customers help us protect our water sources, which are the heart of our community.

2011
Water Quality Report

EXHIBIT D – VILLAGE OF HORSEHEADS WATER QUALITY REPORT [458- 461]

Annual Drinking Water Quality Report for 2011
VILLAGE OF HORSEHEADS
202 South Main Street
(Public Water Supply ID# NY0701009)

Introduction:

To comply with State and Federal regulations, the Village of Horseheads will be annually issuing a report describing the quality of your drinking water. The purpose of this report is to raise your understanding of drinking water and awareness of the need to protect our drinking water sources. Last year, your tap water met all applicable State drinking water standards. In 2011, we conducted tests for over 100 possible contaminants. This report provides an overview of last year’s water quality. Included are details about where your water comes from, what it contains, and how it compares to New York State standards. If you have any questions about this report or concerning your drinking water, please contact Chris Lawrick at 739-5691. We want you to be informed about your drinking water. If you want to learn more, please attend any of our regularly scheduled village board meetings. The meetings are held the second and fourth Thursdays of each month at 7:00 P.M. at Horseheads Village Hall, 202 South Main Street, or you may call the Chemung County Health Department at 737-2019.

Where does our water come from?

In general, the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants. In order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department’s and the FDA’s regulations establish limits for contaminants in bottled water which must provide the same protection for public health. Our water source is ground water drawn from two fifty foot deep wells on Mill Street. We also operate a 70 foot deep well on Old Ithaca Road and maintain a nearby backup well. Following the flooding in 2011, the Old Ithaca Road well was re-classified from a ground water source to groundwater under the influence of surface water. Our water is treated prior to distribution with chlorine for disinfection and fluoride to promote healthy teeth and bones.

The NYS DOH has completed a source water assessment for this system, based on available information. Possible and actual threats to this drinking water source were evaluated. The state source water assessment includes a susceptibility rating based on the risk posed by each potential source of contamination and how easily contaminants can move through the subsurface to the wells. The susceptibility rating is an estimate of the potential for contamination of the source water, it does not mean that the water delivered to consumers is, or will become contaminated. See section “Are there contaminants in our drinking water?” for a list of the contaminants that have been detected. The source water assessments provide resource managers with additional information for protecting source waters into the future. Water suppliers and county and state health departments will use this information to direct future source water protection activities. These may include water quality monitoring, resource management, planning, and education programs.

The source water assessment has rated our wells as having a high to very high susceptibility to microbials, nitrates, industrial solvents, and other industrial contaminants. Well #4 was not in service when the assessments were conducted, but is similar to our other wells. These ratings are due primarily to the close proximity of permitted discharge facilities (industrial/commercial facilities that discharge wastewater into the environment and are regulated by the state and/or federal government) to the wells, and low intensity residential activities in the assessment area. In addition, the wells draw from an unconfined aquifer that yields or pumps greater than 100 gpm and doesn’t provide adequate protection from potential contamination. While the source water assessment rates our wells as being susceptible to microbials, please note that our water is disinfected to ensure that the finished water delivered into your home meets New York State’s drinking water standards for microbial contamination. A copy of the full assessment can be obtained by contacting us, as noted above.

Table with 5 columns: Well Name, Microbials, Nitrates, VOCs, Others. Row 1: Well # 1,2,4,5, VH, VH, H, VH.

Facts and figures:

Our water system serves 15,000 people through 3,612 service connections. The total water produced in 2011 was 714 million gallons. The amount of water delivered to customers was 522 million gallons. This leaves an unaccounted for total of 192 million gallons. This water is used to flush mains, test hydrants, fight fires, municipal use, and loss to leakage. The daily average of water pumped into our system is 1.9 million gallons. Our highest single day was 2.9 million gallons. In 2011, water customers were charged an average annual fee of \$154.48 in the Village of Horseheads and \$231.72 outside the Village for 60,000 gallons of water.

Are there contaminants in our drinking water?

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds (gasoline and industrial solvents), total trihalomethanes, and synthetic organic compounds. The table presented below depicts which compounds were detected in your drinking water. The State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently. Some of our data, though representative, are more than one year old. The state requires that any detected contaminants must be reported for a period of five years.

Testing:

The Village of Horseheads conducts various tests of your drinking water through out the year. This includes 180 samples (fifteen per month) in various locations through out our system for coliform bacteria. We test residual chlorine levels along with fluoride amounts every day of the year. In addition we test for a variety of possible contaminants at the wellheads, and in the distribution system. This level of testing assures the best possible product for your use. It should be noted that all drinking water, including bottled drinking water, might be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the Chemung County Health Department at 737-2019.

Table of Contaminants Detected in 2011 (or latest test)							
Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit	MCL G	Regulatory Limit (MCL, AL, MRDL, TT)	Likely Source of Contamination
Alpha Emitters	No	14 samples in 2008	Average 1 Range 0.1-3	pCi/L	0	15 MCL	naturally occurs
Arsenic	No	4 samples 2008-2009	Average 0.1 Range ND- 0.6	ug/L	N/A	10 MCL	naturally occurs
Asbestos	No	2/28/11 2 samples	Range ND-1.0	MFL	7	7 MCL	erosion of water pipes
Barium	No	10/19/11 2 samples	Average .15 Range .11 to 0.18	mg/L	2	2 MCL	naturally occurs
Chloride	No	10/19/11 3 samples	Average 51 Range 34-73	mg/L	N/A	250 MCL	naturally occurs; use of road salt
Chlorine Residual	No	Year round daily samples	Average .7 Range .25 to 1.4	mg/L	4.0 MRD LG	4.0 MRDL	disinfectant added to control microbial contaminants
Copper	No	7/2011 30 samples	90 th = 0.2 Range 0.03 to 0.6	mg/L	1.3	1.3 AL <i>note 1</i>	corrosion of household plumbing
Fluoride	No	Year round daily samples	Average 1 Range .75- 1.2	mg/L	N/A	2.2 MCL	added by provider to prevent tooth decay
Lead	No	7/2011 30 samples	90 th = 2.7 Range .5 to 4.7	ug/L	0	15 AL <i>note 1</i>	corrosion of household plumbing
Nitrate	No	10/19/11 4 samples	Average 0.8 Range 0.27-1.13	mg/L	10	10 MCL	runoff from fertilizer; leaching from septic tanks, sewers
Radium 226	No	12/2008 4 samples	Average 0.15 Range 0.05-0.2	pCi/L	0	5 MCL <i>Note 2</i>	Erosion of natural deposits.
Radium 228	No	4/2009 11/2009 8 samples	Average 0.8 Range 0.3-1.4	pCi/L			
Sodium	No	10/19/11 2 samples	Average 31 Range 19-42	mg/L	N/A	N/A <i>Note 3</i>	Naturally occurs; Use of road salt
Sulfate	No	10/19/11 2 samples	Average 18 Range 14-22	mg/L	N/A	250 MCL	Naturally occurs
Total Coliform 15 samples each month	No	4/19/2011 1 sample	present	N/A	0	no more than one positive sample each month	Naturally present in the environment.
Total Haloacetic Acids (HAAs)	No	12/2011 1 sample 8/2011	Average 3.4 Range 2.3-4.8	ug/L	N/A	60 MCL	By-product of drinking water chlorination

Table of Contaminants Detected in 2011 (or latest test)							
Contaminant	Violation Yes/No	Date of Sample	Level Detected	Unit	MCL G	Regulatory Limit (MCL, AL, MRDL, TT)	Likely Source of Contamination
2 sample sites		2 samples					
Total Trihalomethanes (THMs) 2 sample sites	No	12/14/11 1 sample 8/2011 2 samples	Average 16 Range 11-19	ug/L	N/A	80 MCL	By-product of drinking water chlorination
Turbidity (Well 5 only)	No	Daily beginning 10/14/11	.29 highest monthly average	NTU	N/A	1.0 TT Note 4	soil runoff

Note 1 – The level presented represents the 90th percentile results of the 30 sites tested. It means 27 of the 30 samples were less than or equal to the level given. No samples exceeded the Action Levels for lead or copper.

Note 2 – The MCL for Radium is the sum of individual measurements of two common isotopes, Radium226 and Radium 228.

Note 3 – An MCL for Sodium is not established. Water containing more than 20 mg/l of sodium should not be used for drinking by people on severely restricted sodium diets. Water containing more than 270 mg/l of sodium should not be used for drinking by people on moderately restricted sodium diets.

Note 4 – Turbidity is a measure of the cloudiness of the water. We monitor it because it is a good indicator of water quality. High turbidity can hinder the effectiveness of disinfectants. Our highest average monthly turbidity measurement (0.29 NTU) occurred in December 2011.

Definitions:

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Maximum Residual Disinfectant Level (MRDL): The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

Maximum Residual Disinfectant Level Goal (MRDLG): The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contamination.

Action Level (AL): The concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system must follow.

Treatment Technique (TT): A required process intended to reduce the level of a contaminant in drinking water.

Nephelometric Turbidity Unit (NTU): A measure of the clarity of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

Milligrams per liter (mg/l): Corresponds to one part of liquid in one million parts of liquid (parts per million - ppm).

Micrograms per liter (ug/l): Corresponds to one part of liquid in one billion parts of liquid (parts per billion - ppb).

Non-Detects (ND): Laboratory analysis indicates that the constituent is not present.

Not Applicable (N/A)

Picocuries per liter (pCi/L): Picocuries per liter is a measure of the radioactivity in water.

Compliance with other sanitary code requirements

We were cited by the Health Department for failing to collect untreated well water samples within 24 hours after the detection of coliform bacteria in a routine customer tap sample collected 4/19/2011. We corrected the violation by collecting the required samples.

The Village conducted precautionary lab testing during and after the September 2011 flooding. Samples collected at Well 5 during the flood period showed the presence of E.coli and traces of algae. These results indicate that Well 5, one of our main water sources, was influenced by nearby Newtown Creek during the flood event. The presence of E.coli in the untreated water was not a violation because our disinfection process meets bacteria and virus removal standards and is continuously monitored. However, because of potential surface water influence, we are required to install a water filtration plant, or develop a new water source, by April 2013.

Due to the change in status of Well 5, we must include the following statement in this report: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites, which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

What does this information mean?

As you can see by the table, our system had no violations. We have also learned through our testing that other contaminants have been detected; however, these contaminants were detected below the level allowed by the State. Additional information can be obtained by calling the safe drinking water hotline at (1-800-426-4791)

Do I need to take special precautions?

Although our drinking water generally met or exceeded state and federal regulations, some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium, Giardia and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

The Village of Horseheads water department is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>. In addition, the Chemung County Health Department can assist you with lead testing.

Information on fluoride addition:

Our system is one of the many drinking water systems in New York State that provides drinking water with a controlled, low level of fluoride for consumer dental health protection. According to the United States Centers for Disease Control, fluoride is very effective in preventing cavities when present in drinking water at an optimal range from 0.8 to 1.2 mg/l (parts per million). To ensure that the fluoride supplement in your water provides optimal dental protection, the State Department of Health requires that we monitor fluoride levels on a daily basis. During 2010 monitoring showed fluoride levels in your water were in the optimal range 99% of the time. None of the monitoring results showed fluoride at levels that approach the 2.2 mg/l MCL for fluoride.

Why save water and how to avoid wasting it?

Although our system has an adequate amount of water to meet present and future demands, there are a number of reasons why it is important to conserve water:

- ☛ Saving water saves energy and some of the costs associated with both of these necessities of life;
- ☛ Saving water reduces the cost of energy required to pump water and the need to construct costly new wells, pumping systems and water towers; and
- ☛ Saving water lessens the strain on the water system during a dry spell or drought, helping to avoid severe water use restrictions so that essential fire fighting needs are met.

You can play a role in conserving water by becoming conscious of the amount of water your household is using, and by looking for ways to use less whenever you can. It is not hard to conserve water. Conservation tips include:

- ☛ Automatic dishwashers use 15 gallons for every cycle, regardless of how many dishes are loaded. So get a run for your money and load it to capacity.
- ☛ Turn off the tap when brushing your teeth.
- ☛ Check every faucet in your home for leaks. Just a slow drip can waste 15 to 20 gallons a day. Fix it up and you can save almost 6000 gallons per year.
- ☛ Check your toilets for leaks by putting a few drops of food coloring in the tank, watch for a few minutes to see if the color shows up in the bowl. It is not uncommon to lose up to 100 gallons a day from one of these otherwise invisible toilet leaks. Fix it and you save more than 30,000 gallons a year.
- ☛ Use your water meter to detect hidden leaks. Simply turn off all taps and water using appliances, then check the meter after 15 minutes, if it moved, you have a leak.

System improvements:

In 2011 we completed another comprehensive leak detection program for a portion of our system. The Village continued its installation of MXU radio readers on an additional 800 meters. We also installed an additional 86 service connections.

Closing:

Thank you for allowing us to continue to provide your family with quality drinking water this year. We ask that all our customers help us protect our water sources, which are the heart of our community and our way of life. Please call our office if you have questions (739-5691). Copies of our test reports may be viewed at the Horseheads Library or the Horseheads Village Hall.

**AFFIDAVIT OF JEAN ADAIR WOSINSKI, IN OPPOSITION TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18,
2012 [462-470]**

1966946

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

State of New York,
County of Steuben, ss.:

JEAN ADAIR WOSINSKI, being duly sworn, deposes and says:

1. I am a resident of the City of Corning. I have lived at 53 Houghton Circle since 1994. I own the house in which I live, which is currently assessed at \$97,000. Following the death of my husband, I purchased a nearby house at 65 Pershing St. as a rental property. The Pershing St. house is also assessed at \$97,000.

2. I am 80 years old. I was born in 1932.

3. My drinking water is supplied by the City of Corning. Pipes from the municipal water system run directly to both of the houses I own.

4. The water for the City of Corning municipal water system is supplied by wells drawing on the groundwater in the Corning aquifer. In addition to supplying water for the City of

Corning water supply, the Corning aquifer also serves as the source of the municipal drinking water supply for the Town of Erwin, the Village of Painted Post, the Village of Riverside and the Town of Corning. A number of businesses and individuals in the area have private wells that also draw from the Corning aquifer.

5. If the Corning municipal drinking water supply were to be diminished or contaminated, it could affect my health and make it difficult for me to continue living in my home. It could also reduce the value of my property. My neighbors and residents of the entire area served by the Corning aquifer could experience the same effects, which could have a negative effect on the overall economy of our area.

6. Based on my training as a geologist and my first-hand experience studying the Corning aquifer, when I first heard that local municipalities were looking into raising revenue by selling water from the Corning aquifer for export to gas drilling companies in Pennsylvania, I became extremely concerned. I felt that their consideration of such ideas showed that our local officials seriously misjudged the character of our local geology and the nature of the aquifer that provides our water supply.

7. For the reasons I explain below, I believe that the extraction of large amounts of water from the Corning aquifer for export to Pennsylvania will seriously and severely diminish both the quantity and the quality of the limited water resource in the aquifer and that this will have a direct negative impact on residents who obtain their water supply from the Corning aquifer, including residents of the City of Corning such as myself.

8. I have a long-standing interest in water issues, both personally and professionally.

9. My childhood years were spent in the suburban community of Silver Spring, Maryland, immediately north of Washington, DC. At that time it was a relatively rural area. The headwaters of Sligo Creek, a tributary of the Anacostia River, flowed at the foot of our property and the creek was an important feature in my childhood environment. The Anacostia River is part of the Chesapeake Bay watershed.

10. As it has turned out, I have lived within the watershed of the Chesapeake Bay for most of my life, except for a few brief years during college and early married life.

11. Growing up, the tragedy of the Dust Bowl was an active concern of the adults of my acquaintance. My father's home in Illinois escaped the worst of the drought's effects, being located in what is referred to as "Little Egypt," the southern portion of the state that fed the remainder during the drought's worst years. Through my father I came to develop a deep appreciation of the potential impact of a diminished water supply..

12. As an undergraduate at Denison University in Granville, Ohio, I majored in geology. During my sophomore year in the summer of 1952, I was hired by the U.S. Geological Survey field office in the Groundwater Branch of the Water Resources Division, located in the coastal plain area of Maryland in Salisbury. There I regularly measured water levels in several active industrial and private wells and a number of abandoned wells, and managed records of their fluctuating water levels. I also serviced several automatic water level gages. Later in the summer I was responsible for collecting and labeling samples at a well drilling site of bedrock penetrated by the boring at periodic depths. Those samples along with samples collected from wells throughout the state were used to construct a three-dimensional model of a several county area of Maryland's Eastern Shore which I created for public display at state and county fairs to portray the classic nature and the extent of various porous rock layers (aquifers) carrying rainfall from the mountains of Western Maryland under the Chesapeake Bay to deep wells on the Del-Mar-Va peninsula.

13. Returning to the Washington, DC area after college in 1954, I rejoined the U.S. Geological Survey. I worked in a USGS office in DC that, in cooperation with the State Department, sent experienced federal, state, and academic ground water geologists to arid countries overseas that needed technical assistance in the provision of adequate water supplies for urban, industrial and agricultural use.

14. My marriage in 1956 to a fellow geologist from Denison University who was

entering graduate school at Brown University afforded an opportunity for me to return to field work at the Providence, R.I. Geological Survey office of USGS's Ground Water Branch. While there, I was allowed to participate in joint field trips conducted by the Brown and Harvard University geology departments. Through my job and the field trips, I was exposed to the complex New England geology and this exposure broadened my understanding of the diversity of water supply problems encountered in meeting municipal and industrial needs.

15. In 1958, my husband and I moved to Corning, NY, upon his employment by Corning Gas Works. We purchased a modest home on extensive rural acreage in the Town of Hornby immediately north of Corning. I appreciated its location at the northern boundary of the Chesapeake Bay watershed.

16. In 1971, I was asked to fill the role of geology instructor for a geologist on sabbatical leave at Corning Community College. That academic year ended with the dramatic Flood of 1972 in the region, induced by Hurricane Agnes.

17. The response of local school administrators to the flood inspired me to prepare information for children who had become traumatized by experiencing the flood and who needed to understand why the flood had occurred. I prepared a talk with slides giving a visual explanation of the weather history preceding the flood and its effect in combination with the steep slopes and flat valley geology of our regional landscape. Although developed for area school children, I gave my talk to many local service clubs as well, providing hundreds of children and adults with information on our local geology and its advantages, limits and hazards.

18. I also spoke out on other matters affecting our environment when I believed I had access to information not generally known to my fellow citizens. My college geology professor had challenged his students to participate in any community discussion throughout our lives when we could offer assistance in civic decisions based upon our understanding of the underlying local geology.

19. I participated for many years in local planning processes—where decisions often

involve a consideration of specific geologic conditions. I was appointed to the Town of Hornby Planning Board in 1968 and subsequently became Chairman. During that period I also served as the Hornby representative to a newly formed Regional Planning Board, then guided by the Three Rivers Development Foundation, headquartered in Corning. The first-ever zoning ordinance in the Town of Hornby was adopted during my tenure as Chair, which ended in 1982.

20. From my study of the Corning aquifer, I learned that, unlike the extensive, porous, water bearing rock layers that comprise what people most often think of as an aquifer, the Corning aquifer consists of relatively narrow branches of loose glacial fill located at the bottom of four deep river valleys. See diagram attached as Exhibit A, Fig. 22 from the USGS report on the Corning Aquifer, from Surficial Aquifer System, Valley-Fill Glacial Aquifers http://pubs.usgs.gov/ha/ha730/ch_m/M-text1.html.

21. The bedrock underlying our valleys and the hills surrounding them is sandy limestone and shale. The bedrock is not sufficiently porous to absorb much water. For this reason, we have no deep bedrock aquifers in this area. Precipitation on our hills is largely shed in the form of fast flowing streams and waterfalls. The aquifers we have are surficial aquifers formed along the valley floors by the rock and sediment debris released by melting glacial ice.

22. Much of the water in the Corning aquifer comes from our relatively reliable precipitation, which replenishes or recharges the valley aquifers and maintains the generally reliable surface flow of the Tioga, Canisteo, Cohocton and Chemung Rivers. These valley bottom aquifers are also recharged by groundwater baseflow from up-gradient portions of the tributary aquifers.

23. During times of high rainfall or snow melt, the Corning aquifer can contain an overly generous supply of water. Because its areal extent is limited to the four river valleys, it readily sends excessive water downstream, towards the Chesapeake Bay. Brief floods have historically inundated valley communities when water cannot be shed quickly enough to avoid spillover from surface river channels.

24. During periods of severely reduced rainfall, surface flows in the rivers are somewhat replenished by up-gradient portions of the aquifer, but ultimately, river levels are reduced and the level of the top of the aquifer, represented by the “water table” level, drops.

25. This area has experienced a number of periods of low rainfall in the more than 50 years that I have lived within the Corning watershed. I recall 5 or 6 instances when the rainfall was so low that Corning residents were urged to reduce water consumption by restricting the watering of lawns and washing of cars.

26. We experienced low rainfall this past summer, the summer of 2012, and this resulted in extremely low flow in the Chemung River in Corning.

27. I think the low river flow we saw this summer was exacerbated by the water exports of the Town of Erwin, which started in September 2010 and continued throughout the summer, and by the water exports of the Village of Painted Post which started-up in Mid-August.

28. I anticipated a situation such as this when I read in 2011 that the Village of Painted Post and the City of Corning were considering plans to sell millions of gallons of water per day to gas drilling operators in Pennsylvania, and that the Town of Erwin had already embarked upon such sales in 2010.

29. After reading of these plans, I spoke out about my concerns about detrimental impacts in an op-ed piece in the *Corning Leader* on January 27, 2012, and as a panelist in a program on municipal water sales held in Bath on March 7, 2012, that was sponsored by the Steuben County League of Women Voters and the Bath Peace and Justice Group. See Exhibit B.

30. In my op-ed, I said that the Susquehanna River Basin Commission (SRBC) misjudged the character of our local geology and the nature of our water supply, and had ill-advised our local municipalities.

31. At the time I wrote the op-ed piece, it was my understanding that the SRBC had evaluated the impact of the proposed withdrawals and determined that the aquifer was sufficient to

support them. In my op-ed, I disagreed with that determination. I have since been advised by my attorneys in this case that in granting approvals to gas drilling operators to use a particular municipal water source, the SRBC's project review regulations, 18 CFR Part 806, rely on state permits issued to public water supplies and exempt pre-compact consumptive uses from review, so that my assumption, as stated in the op-ed, that the SRBC determined that the Corning aquifer was sufficient to support the Painted Post and Erwin exports may not have been correct.

32. Whether or not the SRBC evaluated the aquifer in granting approvals for these withdrawals does not change the basic point of my op-ed—that the aquifer is not sufficient to support exports for hydrofracking in Pennsylvania by our municipalities.

33. I also attended as many of the meetings of the Painted Post Village Board as I could for which the published agenda included a discussion of possible water sales. I wanted to understand the Board's reasoning on the issue and help them, if possible, better understand the limits of the valuable, indispensable, but limited resource they were dealing with—the water of the Corning aquifer. I hoped to convey to the Board my concern for the impact of their decision upon the water supply of the residents of their village and upon other residents in the area drawing their water from the Corning aquifer, including residents of the City of Corning, its schools, hospital and businesses, such as myself, given the unique geology of our area.

34. I learned that all the Village board was considering in evaluating the water sale proposal was the financial benefit. They never even mentioned possible impacts on the water supply or the aquifer, or other environmental impacts. They seemed to think that because water demands in the Village were not as great as they had been in the past, there was plenty of water to be sold for export and that approval SWEPI had received from the SRBC was sufficient. They did not consider the differences between uses in the Village which are returned to the local aquifer and the export of large volumes of water away from the aquifer. Apparently feeling themselves to be under financial duress, the village board appeared to prefer the option of the water sales to the other option they felt they had, merger of the Village with the Town of Erwin.

35. Not being a citizen of Painted Post, I was not offered an opportunity to speak at the Village Board meetings, other than at one public hearing. Thus I had only a few brief opportunities to express my concerns, mostly to individual Board members informally, following their meetings.

36. Because of my concerns about the impacts of the water withdrawals on the Corning aquifer, I have joined some of my fellow petitioners in testing my tap water and the tap water elsewhere in Corning for total dissolved solids (TDS). I have been using a HM Digital COM-100 combo meter. The HM Digital COM-100 meter measures electrical conductivity, total dissolved solids and temperature. This meter is factory calibrated. The results of each of the three measurement options are read by switching directly from one mode to another. I used the TDS mode in my water quality testing.

37. My initial test on 10/26/12 showed that the tap water at my home at 56 Houghton Circle was very hard: 815 ppm TDS. This is significantly above the EPA National Secondary Drinking Water Regulations, which set 500 mg/L (ppm) as Total Dissolved Solids (TDS) as a Secondary Maximum Contaminant Level. Later testing showed some softening. My most recent test at my home on 11/24/12 found a TDS level of 798 ppm. My testing at other properties in the area showed similar results. My test results are shown in Exhibit C attached.

38. I find it very interesting that the water supply of the City of Corning shows higher TDS levels than tests of the water supply in the Village of Painted Post this fall, as shown by a comparison of my testing results with the results described in the affidavits of some of my fellow petitioners. This is an indication that the withdrawals may be having a more serious impact on the Corning water supply than they are having on the Painted Post water supply.

39. Whatever the reason for the differences, whether it is due to the shape of the aquifer, the location of the wells or something else, the differences highlight the need for a full-scale analysis of the possible impacts on the aquifer before any more withdrawals are allowed.

40. Based on my training as a geologist and my first-hand observations of the Corning

aquifer over more than 50 years, I believe that continuation of large water exports from the Corning aquifer will seriously and severely diminish both the quantity and the quality of this limited water resource.

41. Water is our most valuable and vulnerable resource and a valid understanding of our environment is crucial to the continuation of good health and industrial wealth in our community. The extremely short-sighted action by the Village of Painted Post in selling large amounts of our regions water to SWEPI for gas drilling in Pennsylvania displays a deep ignorance of the character of our local geology and the nature of our local water supply.

I have personal knowledge of the facts set out in this affidavit.

Jean Alain Wosinski

Sworn to before me this 18th day of December 2012.

Rachel Treichler

Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified In Steuben County
Commission expires 04/22/2014

EXHIBIT A – MAP OF CORNING AQUIFER

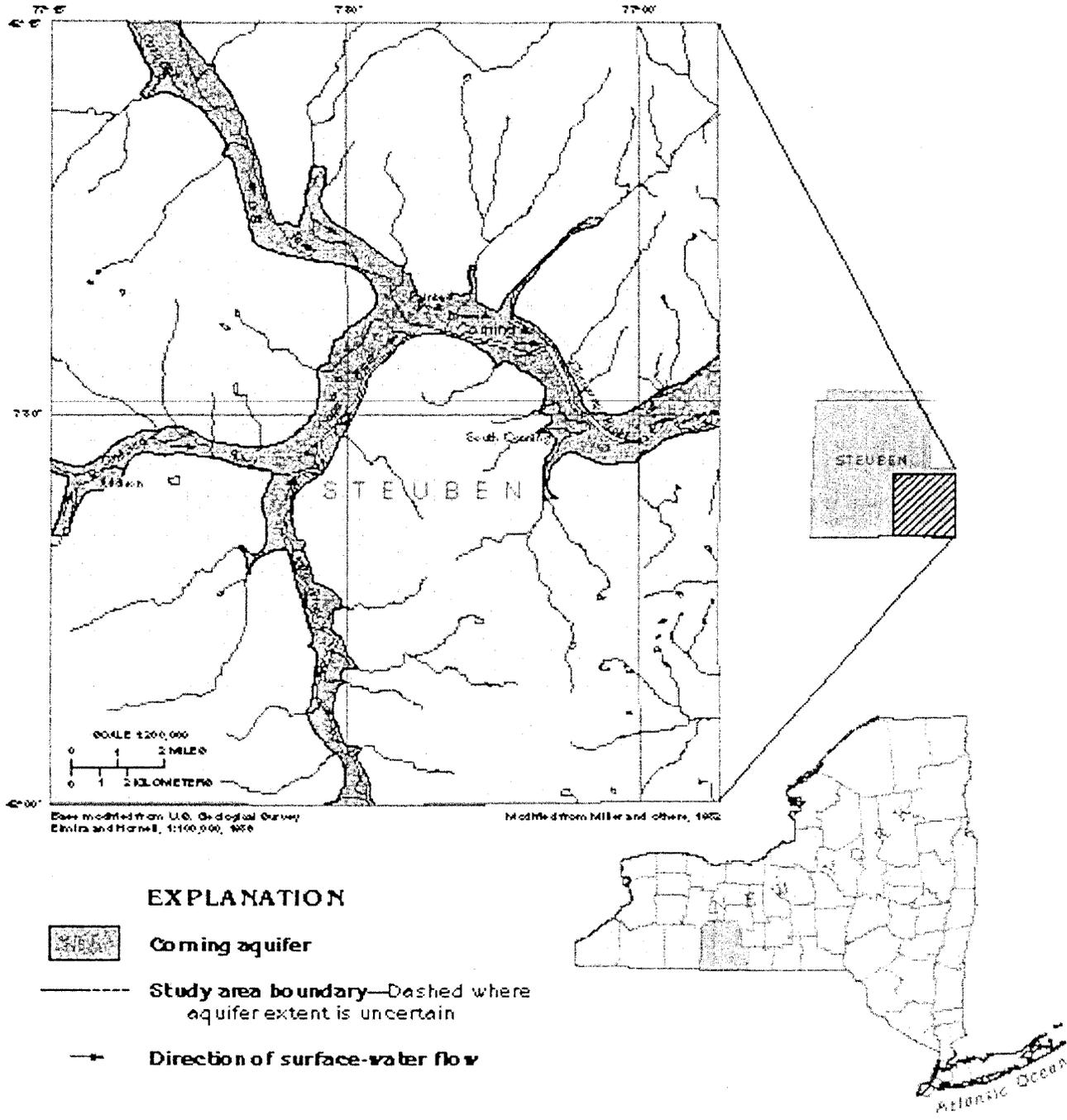


Figure 22. The Corning aquifer occupies four deeply incised bedrock valleys drained by the Chemung, Canisteo, Tioga, and Cohocton Rivers.

Modified from Miller, T. S., Stelz, W.G., and others, 1982, Geohydrology of the valley-fill aquifer in the Corning area, Steuben County, New York: U.S. Geological Survey Open-File Report 82-85, 6 sheets, scale 1:24,000.

OPINION

FRIDAY | JANUARY 27 | 2012 | PAGE 4A

GUEST VIEW | JEAN WOSINSKI

Don't let drillers tap our water

I write to join three or four others of your readers who have expressed concern regarding possible sale of water supplies to well drilling operators in Pennsylvania. I am aware that the Susquehanna River Basin Commission has decided that the "aquifer" which supplies Painted Post and Corning is sufficiently generous to allow both municipalities to engage in this commerce and so it is with that Commission that I must disagree. I rely upon my college professors, my five years with the Water Resources Division of the U.S. Geological Survey and my familiarity with the local geology to judge them in error.

There is no "aquifer" in the traditional sense that provides our local water. The village and the city lie in a valley which is downstream from a network of valleys, all of which have been at least partially filled with glacial deposits. These deposits are our "aquifer."

The deposits consist of sands, gravels, clays and boulders left behind by the melting of glacial ice, which had been forced into this part of what is now New York state from the Canadian Shield. Snow there had accumulated to such great depth that over the years its own weight converted it to ice. That weight – pressing down and outward – caused it to slowly flow across the landscape as if it were thick pancake batter flowing across a hot grill. As it crept and scraped along in this direction, it brought here whatever loose soil and rock had stuck to it.

Generally, the ancient pre-glacial network of north-flowing rivers and streams still remains, buried or only partially filled with well worn soils and sands and rock debris from Canada and northern New York. "Valley fill," as it is called, yields water readily because it is full of billions of small voids which rain water can occupy and which allow the water to flow, as if from a sponge. It is that network of valleys, partially filled with loose glacial material of a wide range of grain size, (from clay and sand to huge boulders), which the Susquehanna River Basin Commission considers as being our "aquifer."

In contrast, the flat-lying, gray shales and sandy limestone of Devonian age which underlies our generally hilly landscape, sometimes yields fossils but it does not like to yield water. In fact, our bedrock is about as unhappy yielding water as the Marcellus Shale is of yielding natural gas.

A classic aquifer is a broad formation which is composed of porous material, (ideally sandstone), which can absorb rainfall and through which that water can flow to wells and to streams and lakes, for our use. Instead, our broad bedrock formation is stingy – tightly holding what little water it contains. But, fortunately enough, its rough topography was swept across by a very dirty glacier four times in the last few million years. Its ice melted and left behind a spongy network for us to stick our straws, (our wells), into. It works well for us; (no pun intended), but it is not the broad expanse of a classic "aquifer." It is a limited network of narrow debris-filled valleys in a region where rainfall is sometimes very generous and sometimes very stingy. We have witnessed, this past year, exactly how fickle our rainfall can be.

The Susquehanna River Basin Commission has misjudged the character of our local geology and the nature of our water supply. They have ill-advised our local municipalities. We should, with urgency, request of our city officials that water from our limited "aquifer" not be shared or sold to operators of gas drilling outside our area and across state boundaries. Pennsylvanians will have their opportunity to use the Susquehanna River water downstream, after the Chemung has joined it in Waverly and Sayre and Athens, Pa. If we have "surplus" water, it's readily available to them there.

© Jean Adair Wosinski is a Corning resident.

To sell or not to sell water to Pa.



THE COOPER/MARY PERHAM
A forum on issues raised by recent plans for local municipalities to sell water from municipal water supplies for gas drilling in Pennsylvania was held 7 p.m. March 7, at the Bath Fire Hall, 50 East Morris St.

The forum featured Jean Wosinski, a geologist from Corning, who addressed the geology of our local water sources and whether they can sustain large water exports. Other speakers included Rachel Treichler and Virginia Rasmussen who spoke on legal issues surrounding the sale of water.

EXHIBIT C – WATER TESTING TABLE

Exhibit C

Water Testing for Total Dissolved Solids by Jean Wosinski in Corning and Hornby, NY

<u>Date</u>	<u>TDS mg/L</u>	<u>Address</u>	<u></u>	<u>Comments</u>
10/26/12	815	52 Houghton Circle	City of Corning	
11/04/12	690	52 Houghton Circle	City of Corning	
11/08/12	633	52 Houghton Circle	City of Corning	
11/10/12	526	65 Pershing St.	City of Corning	Before laundry
11/10/12	530	65 Pershing St.	City of Corning	After laundry
11/21/12	609	52 Houghton Circle	City of Corning	
11/21/12	609	65 Pershing St.	City of Corning	
11/24/12	798	52 Houghton Circle	City of Corning	
11/25/12	764	101 Columbia St.	City of Corning	
11/28/12	768	101 Columbia St.	City of Corning	
11/29/12	763	101 Columbia St.	City of Corning	
12/06/12	116	County Rt. 42	Town of Hornby	Cutler Creek
12/06/12	255	County Rt. 42	Town of Hornby	Private well

**AFFIDAVIT OF EUGENE STOLFI, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 18, 2012
[475-479]**

1966943

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Steuben, ss.:

EUGENE STOLFI, being duly sworn, deposes and says:

1. I am a resident of the Town of Corning. I live at 2930 Gorton Road, Corning, NY.
2. My drinking water is provided by an artesian spring on my property.
3. From 1989 to 1999, I worked at Corning, Inc. as a senior mechanical engineer. I retired in 1999. Since retiring, I have worked on and off as a consultant at Corning, Inc.'s Sullivan Park facility in the Town of Erwin.
4. I am a member of the Sierra Club and am active in the Club's Finger Lakes Group. I have been a member of the Group Executive Committee since 2006.
5. In June 2011, I began testing water supplies in the area for TDS (total dissolved solids).

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

6. My testing began as a result of a project at work where we suspected hard water was affecting the performance of machines and causing equipment failure. The equipment is operated with water drawn from the Town of Erwin's municipal water system.

7. To determine TDS levels in the water we were using, I purchased an HM Digital COM-100 combo meter and began testing the tap water at Corning Inc.'s Sullivan Park facility. The HM Digital COM-100 meter measures electrical conductivity, total dissolved solids (TDS) and temperature. This meter is factory calibrated. The results of each of the three measurement options are read by switching directly from one mode to another. I used the TDS mode in my water quality testing.

8. My initial tests showed that the tap water at Sullivan Park was very hard, above 600 TDS. My initial tests on 6/23/11 and 6/29/11 were during a dry spell. Testing several weeks later on 8/5/11 and 8/7/11, after two days of rain showers, showed that the water had softened to below 400 TDS.

9. I researched EPA requirements for TDS and learned that the EPA National Secondary Drinking Water Regulations set 500 mg/L (ppm) as Total Dissolved Solids (TDS) as a Secondary Maximum Contaminant Level.

10. My testing showed TDS levels consistently above 500 parts per million (ppm) in wells drawing on the Corning aquifer. My test results are attached as Exhibit A.

11. As a result of my testing and the testing of others, Corning Inc.'s Sullivan Park facility now treats all water it uses in its machines with a reverse osmosis filter. Machine performance has dramatically improved, with much lower levels of equipment failure.

12. After I began testing and sharing information with co-workers, several people asked me to test their water so they could know what TDS levels they had in their household water supplies.

13. Consequently, I tested water drawn from taps drawing on the municipal water systems of the Town of Erwin, Town of Corning and City of Corning at various locations. Each

of these municipal water supply systems draws on wells in the Corning aquifer for its water supply.

14. This year, I continued my testing of drinking water supplies in this area out of my personal concerns for the future availability of potable water for residents of this area and myself.

15. On June 14, 2012, I participated in the Sierra Club Water Sentinels water testing training held in Painted Post and since that time I have been testing two locations on a monthly basis: 1. The Tioga River at Mulholland Bridge, and 2. Erwin Hollow Creek.

16. The testing site I monitor on the Tioga River is located at the Mulholland Bridge on Mulholland Road in the Town of Erwin. This testing site is near the Town of Erwin's water rail-loading facility on the Wellsboro & Corning Railroad line that runs near the river at that location. I can see the facility from where I park along Mulholland Road.

17. From this vantage point, I observed that the Erwin water shipments from the rail loading facility near Mulholland Bridge continued all through the summer of 2012, even during the drought.

18. My testing endeavors have given me a better understanding of our valley's water supply and have caused me to be more concerned about the future availability and quality of potable water used by the residents of Painted Post and myself than I was before I began testing.

19. I observe that water drawn from private wells in the valley and on hills typically tests just above 200 ppm TDS. The private wells are generally about 60 feet to 100 feet deep.

20. I observe that rivers and streams in our area usually test in the 200-220 ppm TDS range

21. The waters I have tested from municipal taps drawing on the aquifer consistently run above the EPA suggested maximum of 500 ppm TDS parts per million (ppm) unless that have been heavy rains. Within one day after a heavy rain I routinely observe that TDS in tap water is diluted to less than 500 ppm TDS. If the rain stops, the TDS levels climb above 500 within 24

hours. I believe that reduced TDS levels after a rain shows that rain water dumps right into the aquifer and dilutes the hardness. This indicates that our valley's creeks and fields and ground are very porous and allow rain water to immediately charge the aquifer.

22. I have noticed that when I test TDS levels in Erwin and Corning on the same day, each of the water samples has similar TDS levels, usually above 500 ppm TDS. Only after a heavy rain would the number dip under 500 for a short time of one or two days. This leads me to believe that the sections of the Corning aquifer from which each municipal water system draws its water supply are closely connected and that the deep well aquifer under this area is under stress from being drawn down to deeper levels that carry more salts and minerals.

23. My testing indicates that the aquifer at Painted Post and Erwin — the three river junction— is under stress causing the hardness to exceed the EPA recommended drinking water maximum.

24. I speculate that water removal for rail shipments for fracking in PA is increasing the hardness of the water in this aquifer

25. I speculate that we are pumping down to deeper layers of mineral, salt and other unknown solids.

26. Our water supply is not unlimited—the more we remove from this glacial pocket, the harder the water becomes.

27. The shipments of water by the Town of Erwin and the Village of Painted Post to Pennsylvania for gas drilling increase my concern.

28. These shipments may explain the very high TDS levels I recorded late in the summer.

29. Addressing increasing TDS in the municipal drinking water supplies will substantially increase water supply system costs of operation.

I have personal knowledge of all facts set out in this affidavit.

Eugene Stolfo

Sworn to before me this 18th day of December, 2012.

Rachel Treichler
Notary Public, State of New York

RACHEL TREICHLER
Notary Public, State of New York
No. 02TR5058999
Qualified in Steuben County
Commission expires 04/22/2014

EXHIBIT A – WATER TESTING TABLE

Exhibit A

Water Testing for Total Dissolved Solids in the Corning Aquifer
and Surrounding Areas by Eugene Stolfi

<u>Date</u>	<u>Location</u>	<u>Municipality</u>	<u>Comment</u>	<u>TDS ppm</u>
06/23/11	Sullivan Park	Town of Erwin	Municipal well	558
06/29/11	Sullivan Park	Town of Erwin	Municipal well	609
08/08/11	Sullivan Park	Town of Erwin	Rain from 8/5/11-8/7/11	451
08/12/11	37 Katie Lane	Town of Erwin	Municipal well	562
01/18/12	Sullivan Park	Town of Erwin	Municipal well	522
01/18/12	170 Hillview	Town of Big Flats	Private well	212
01/26/12	Sullivan Park	Town of Erwin	Municipal well	630
04/10/12	Sullivan Park	Town of Erwin	2 days light rain	537
05/15/12	Sullivan Park	Town of Erwin	2 weeks rain	489
06/12/12	170 Hillview	Town of Big Flats	Private well	212
06/12/12	2930 Gorton Road	Town of Corning	Private artesian spring	214
06/20/12	2930 Gorton Road	Town of Corning	Private artesian spring	202
06/27/12	Sullivan Park	Town of Erwin	1 week rain	473
07/09/12	Sullivan Park	Town of Erwin	Showers 7/07	427
07/16/12	Sullivan Park	Town of Erwin	Showers 7/15	412
07/26/12	Sullivan Park	Town of Erwin	Rain night 7/25	406
08/01/12	56 Erwin St.	Town of Erwin	Municipal well	686
08/04/12	74 Wardell St.	City of Corning	Municipal well	870
08/06/12	Sullivan Park	Town of Erwin	Municipal well	471
08/26/12	11 Dogwood Lane	Town of Erwin	Municipal well	692
09/10/12	Sullivan Park	Town of Erwin	Heavy rain week before	412
10/06/12	37 Bridge St.	City of Corning	Municipal well	604
10/06/12	56 Erwin St.	Town of Erwin	Municipal well	657
10/06/12	11 Dogwood Lane	Town of Erwin	Municipal well	680
11/14/12	2930 Gorton Road	Town of Corning	Heavy rain week before	128

**AFFIDAVIT OF PAUL RUBIN, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON DECEMBER 19, 2012
[481-499]**

1966914

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Ulster, ss.:

PAUL RUBIN, being duly sworn, deposes and says:

1. I am a hydrogeologist and hydrologist with thirty years of professional experience. I earned a B.A. degree from the State University of New York at Albany in 1977 and an M.A. degree in geology with a specialty in hydrogeology from the State University of New York at New Paltz in May, 1983. My professional experience includes work conducted for the New York State Attorney General's Office (Environmental Protection Bureau), Oak Ridge National Laboratory (Environmental Sciences Division), the New York City Department of Environmental Protection, and as an independent environmental consultant as President of HydroQuest. My educational background and professional experience are more fully set forth in my Curriculum Vitae, attached as Exhibit A.

2. Within the broad field of hydrology, I have specialized expertise in both surface water and groundwater hydrology. I have conducted detailed assessments of streams, wetlands,

watersheds, and aquifers for professional characterizations, for clients and as part of my own personal research. I have authored numerous reports and affidavits related to this work and have made presentations to judges, juries, the assembly, the senate, and others. In addition, I have published papers and led all-day field trips relating to this work at professional conferences.

3. More recently, I have been called upon by a number of environmental groups to address hydrogeologic and environmental issues associated with hydraulic fracturing. A synopsis of this work is attached as Exhibit B.

4. This affidavit evaluates the hydrologic consequences of the withdrawal of potable waters of New York State within the primary unconsolidated aquifer referred to as the Corning aquifer. The content and conclusions of this affidavit are based upon generally accepted scientific principles. Issues that are raised are based upon significant research and my geologic and hydrogeologic expertise.

5. For the reasons described below, I am of the opinion that, before the Village of Painted Post or any of the other individual municipalities drawing on the Corning aquifer for their municipal water systems are permitted to engage in water exports from the aquifer, hydrogeologic testing needs to be conducted on production wells in the aquifer to determine the safe yield of the aquifer and an inter-municipal drought management plan needs to be adopted by the municipalities drawing on the aquifer so that there is agreement about how withdrawals will be restricted in a time of drought.

6. Prior to reaching the conclusions provided in this affidavit, I reviewed a number of documents including the Village of Painted Post Full Environmental Assessment Form dated 2-23-12, an affidavit of Mr. William R. Gough, Stearns & Wheeler, LLC 2002 Chemung River Valley Water Study, the Full Environmental Assessment Form (EAF - Village of Painted Post: Lease Agreement for Transloading Facility Site; Lease of 11.84 acres to Wellsboro & Corning Railroad to transport approximately one million gallons of potable water daily; 2-23-12), the Surplus Water Sale Agreement between the Village of Painted Post and SWEPI LP, the affidavits

of Eugene Stolfi, Jean Wosinski, Larry Smith and Robert M. Drew, the 2011 Hunt Engineers report, other documents, and assorted gas industry related material.

7. A key issue central to the planned sale of Corning aquifer water by the municipality of Painted Post is whether there is adequate water available from existing municipal wells to meet existing water demand with sufficient excess to sell. There is no indication in the documents I reviewed that the Village of Painted Post conducted the pumping tests and modeling studies needed to confirm the safe yield of their production wells in a time of drought or otherwise. This is important because the sufficiency of water quantity has not been demonstrated, nor have potential adverse water quality impacts been assessed.

8. A limited pumping test is mentioned in one sentence (page 2) of the Nov. 11, 2011, Hunt Engineering Report and referenced in the affidavit of Robert Drew, but this test cannot be evaluated because no data, no graphs, no analysis and no information is provided. Similarly, Appendix D provides no hydrogeologic data that would be needed in assessing safe yield, just differences in pressures in water distribution lines. The affidavit of Robert M. Drew sheds no additional light on the safe yield of the aquifer at any location because, again, no data is provided. Drew states:

“...Hunt also at the insistence of the Railroad and the Village undertook an extensive study to insure that the withdrawals associated with the sales of surplus water would not have adverse impacts on the Village Water System and its users.”

I was not able to find any aquifer test data or information of this kind in the November 11, 2011 Hunt report. Relative to water availability, the Drew affidavit is hollow and provides no supporting hydrogeologic documentation that could be evaluated by a professional hydrogeologist. Furthermore, in his affidavit, Larry E. Smith refers to both Drew’s affidavit and the Hunt report as documenting “... a comprehensive study to evaluate whether the sale of surplus water could have any material negative impact on the Village System, including on users of it and it set forth the results of that analysis in a report dated November 11, 2011 ...” It is interesting to see Smith seems to cross-reference the Drew affidavit and Hunt report to somehow lend

legitimacy to the notion that adequate water was found via a “comprehensive study” that is not in the Hunt report or, apparently, anywhere else. Larry Smith, in paragraph 6 of his affidavit, provides numbers for the “*authorized production capacity*” of three Village wells. These are, for all intents and purposes, basis-less numbers with NO supporting data, graphs, analysis or information. The interplay presented between the Smith and Drew affidavits and the Hunt report has no hydrogeologic or scientific merit whatsoever relative to well or aquifer yield. Simply put, they should be discarded as being grossly misleading and without provision of any scientific information that might be viewed or analyzed.

Although Mr. Gough and Mr. Foster assert in their affidavits that the Village has data to support its claim of no harm, they do not provide the data that would back up their assertions. In the absence of such data there is but one rationale conclusion that a professional hydrogeologist can make relative to the extraction of large volumes of aquifer water – unless substantiated by analysis of rigorously collected, reproducible, drawdown and recovery data, there is no justifiable reason to permit its extraction. To do so would jeopardize the resource with possible adverse environmental and water availability impacts.

9. The 2002 Stearns & Wheeler report repeatedly points out that more data is needed to assess individual well yield. The need for rigorous aquifer drawdown and recovery testing is addressed below. It would not be scientifically prudent to rely solely on past, long outdated, permit conditions to insure continued adequate water yield.

10. Sale of large quantities of groundwater should be based on the rigorous assessment of aquifer test data that may be impartially reviewed and analyzed by professional hydrogeologists. Respondents provided an affidavit of geologist William R. Gough dated August 1, 2012. Mr. Gough informs the court that he has knowledge and experience with groundwater projects in the Chemung River Basin and that his knowledge of Village of Painted Post well characteristics and yields “...confirm that Wells No. 2, 3 and 4 are prolific producing wells with high yields.” These are only words with no quantifiable data provided to substantiate the statement made. Mr. Gough also states that these three wells, on average, produce less than 20%

of their combined permitted capacity which is stated as being in excess of 4,000,000 gallons per day (gpd). Assorted, but unidentified, reports are referred to that “ ... *indicate* (emphasis added) *that the total overall average daily withdrawal rates in Corning are approximately one-half of such aquifer’s sustainable yield even during a severe drought.*”

11. There is nothing in the record to show that in approving the sale of up to 1.5 million gallons per day (mgd) from the Corning aquifer, the Village of Painted Post took any steps to assess potential adverse environmental impacts of multiple sales by other municipalities, industries, or private individuals who may also decide to sell Corning aquifer water. Approval by a municipality to sell water from a single, jointly used water source (i.e., the Corning aquifer), should not be conducted in isolation. The impact of water sale by multiple sellers must first hydrogeologically assess water quantity available to each municipality with existing or new wells. In this manner decisions can be made that will not unduly allow one or multiple parties to deplete the Corning aquifer beyond its safe yield at the expense of others. Potential adverse cumulative impacts should be addressed prior to selling any surplus water. The Corning aquifer services many public and private parties. For one municipality to issue a negative SEQRA declaration relative to significant water extraction on a segment of a water supply needed by many clearly does not address impacts to the aquifer as a whole or relative to the cumulative demand of its many water users. A full environmental review of the impacts on the aquifer is needed.

12. Neither the Village of Painted Post nor Mr. Gough provide any of the standard hydrogeologic pumping drawdown and recovery data required by hydrogeologists to characterize water availability and make informed water demand management decisions. No current groundwater studies were conducted. There is no data supportive of conclusions made by Mr. Gough. This supports the need to conduct well specific hydrogeologic testing. Unfortunately, Mr. Gough’s affidavit does not provide any factual aquifer drawdown and recovery test data, semi-logarithmic graphs of drawdown vs. time with projected 180-day aquifer drawdown, assessment of overlapping cones of depression that might substantially lower the safe yield of the aquifer, assessment of aquifer coefficients of transmissivity (generally – the rate at which water

flows through an aquifer) and storage (generally – indicates how much water can be removed by pumping), hydraulic conductivity (i.e., coefficient of transmissivity divided by aquifer thickness), and technical analyses to the court such that any of his statements might be independently evaluated by expert hydrogeologists. Safe yield is defined in the Groundwater Foundation's Glossary of Groundwater as: "*The annual amount of water that can be taken from a source of supply over a period of years without depleting that source beyond its ability to be replenished naturally in 'wet years'.*" The coefficients of transmissivity and storage, for example, are especially important because they define the hydraulic characteristics of a water-bearing formation. Without semi-log plots of drawdown vs. time, hydrogeologists cannot make well-informed decisions regarding long-term water availability and safe yield. Mr. Gough neither provides nor discusses any of this critical information used by professional hydrogeologists. This complete lack of data, any related hydrogeologic analyses, bolstered only with a supporting statement that uses the word "*indicate*" does not provide the court with scientifically defensible proof of the safe yield of the Corning aquifer or a hydrogeologically documented water quantity that might be safely extracted each day, day after day. Simply put, Mr. Gough failed to provide any hydrogeologic data to support his claims. Whether the water quantity claimed is available, or not, cannot be determined based on the lack of data in Mr. Gough's affidavit. As such, Mr. Gough's affidavit should be dismissed based on the lack of provision of any supportive or substantive data and information.

13. While it is true that unconsolidated glacial aquifers are typically high yielding, professional hydrogeologists, the New York State Department of Environmental Conservation (NYSDEC), and the New York State Department of Health recognize that documentation of water availability or its safe yield, as required for major development projects, must be based on current pumping test data (i.e., aquifer tests), not many decades old information. Relative to Painted Post, the Stearns & Wheler, LLC 2002 Chemung River Valley Water Study states:

“The Painted Post wells and storage tanks are numbered and labeled on Figure 3-1 as Well Nos. 1, 2, 3, and 4. Well No. 1, as shown, is an abandoned well. Well No. 2 has an approximate capacity of 0.58 mgd and is used only as a standby source of water. Well No. 3, with a capacity of 0.73 mgd, and Well No. 4, with a capacity of 1.5 mgd, are the main sources of supply for the village’s water system.”

14. Technical support for these numbers appears to be lacking in the study. In fact, as documented below, the Stearns & Wheler study repeatedly states that adequate information is not available to have confidence in individual production well capacity. The sale of any Painted Post/Corning aquifer water should be premised on current aquifer test information and analysis, not on long antiquated information that is not available for review or standard hydrogeologic analysis.

15. NYSDEC provides detailed technical guidance in their *Recommended Pumping Test Procedures for Water Supply Applications* (most recently dated March 2011; Appendix 10, TOGS 3.2.1). This test procedure, currently required by the State of New York for assessment of sufficiency of water quantity for major development projects, should be required of major production wells that tap the Corning aquifer. To rely upon antiquated aquifer test data for the major water withdrawal quantities projected (to 1.5 million gallons per day [mgd]) would not be prudent.

16. The magnitude of planned water withdrawals from the Corning aquifer is analogous to that typically attendant to major development projects anywhere in New York State. As such, the lead agency should have mandated the Respondents to assess all aspects of the project via the standard SEQRA Environmental Impact Statement process. Because water supply is crucial to most major projects, SEQRA related approval of any water supply application, project applicant’s “*must determine that the proposed well or wells will adequately meet the needs of the applicant without adversely affecting others who may rely on the same aquifer.*” Thus, NYSDEC TOGS 3.2.1 recommends that “[t]he pump test must be performed at or above the pumping rate for which approval will be sought in the water supply application. If multiple wells are to be pumped simultaneously to achieve the necessary yield, the pump test should incorporate such a

pumping plan.” Painted Post should require that project production wells be pumped simultaneously to assess overlapping cones of depression and potentially reduced water availability. The magnitude of planned Village of Painted Post water withdrawals should have spurred the Village to require this testing.

17. Knowledge of the safe yield of the Corning aquifer does not alone provide sufficient information upon which to approve or disapprove the Respondents’ desired daily water withdrawals of up 1.5 mgd as allowed in the Surplus Water Sale Agreement between the Village of Painted Post and SWEPI LP. Other key factors that should be evaluated include current cumulative use and projected future use, as well as potential adverse impacts associated with repeated drought years. While some of this information is addressed in the 2002 Stearns & Wheler study, their own numerous caveats make it clear that much additional data and modeling work is needed before specific water withdrawal recommendations can be made beyond that of a broad regional nature. There is no hydrogeologic data available to support any stated Painted Post aquifer capacity or excess capacity numbers. Thus, the sale of any quantity of “surplus” water is not based on available hydrogeologic data or its interpretation. Furthermore, the Respondents failed to address the implications of the Recommended Standards for Water Works (aka, the 10 States Standards) relative to surplus aquifer water withdrawal. These Standards require that *“The total developed groundwater source capacity, unless otherwise specified by the reviewing authority, shall equal or exceed the design maximum day demand with the largest producing well out of service.”*

18. The Stearns & Wheler, LLC 2002 Chemung River Valley Water Study discusses drought related issues relative to the Corning aquifer. As stated in the report:

“In the late 1990s, industrial production in the valley was at a peak and additional growth was anticipated. Due to this growth, and the fact that the 1990s had experienced two extended dry periods (1991 and 1999), the communities recognized that a better understanding of the valley’s ability to support growth from a water supply perspective was needed.”

19. Key target information sought by this study was the development of a drought management plan and the determination of the safe yield of the Corning aquifer for the four communities involved in the study (Towns of Erwin and Corning, City of Corning, and the Villages of Painted Post and Riverside). Table 2-1 of the study shows a 2001 maximum daily water demand of these communities of 4.39 mgd for a service area population of 19,570 people. Table 2-2 compares the 2002 population of the involved communities (20,720) with the projected 2012 population (21,220). Table 2-3 shows 2002 and projected 2012 maximum day water production (i.e., municipal water use) for the study area communities (4.55 mgd and 4.57 mgd, respectively). Based on available information, the study estimated that maximum daily 2012 industrial water use that would also draw from the Corning aquifer as 6.0 mgd. Thus, adding these values together, the total estimated 2012 maximum daily water withdrawal from the Corning aquifer was projected to be on the order of 10.6 mgd. Because the Respondents have not provided any rigorously collected, well-specific, drawdown and recovery data, it is not possible to know what the actual safe yield is of the Corning aquifer.

20. As part of the Chemung River Valley Water Study a partial modeling study was conducted that did not have all the desired model inputs desirable and did **not** provide the scientific basis to assess aquifer water level decrease and depletion as a result of pumping individual or multiple village or town production wells. The study report addressed this issue:

“Where specific data was not available, literature values for aquifer characteristics and professional judgment were used to establish parameters essential to the model. Then, the CAAM was used to evaluate the groundwater levels and **potential** [emphasis added] induced infiltration on a regional scale. It is important to note that the CAAM [Corning Area Aquifer Groundwater Flow Model] was developed and designed to make assessments on regional groundwater flow issues (such as basin recharge and estimated ground water level under drought conditions). **The CAAM was not structured to make accurate assessments on the impact that pumping from an individual production well would have on a local scale (village or town)** [emphasis added]. To make these types of assessments, the CAAM would have to be updated and recalibrated as discussed in section 6.4 in this report. ... Model input information not directly listed in the 1988 model report, such as stream stage at river nodes or the

top and bottom of geologic units, **was estimated** [emphasis added] based on data presented in the report. ... The CAAM was reconstructed utilizing the same underlying **assumptions** [emphasis added] and boundary conditions outlined in the above-referenced modeling report. ... As presently constructed, the CAAM developed in 2002 and calibrated to concur with the SRBC model of 1988 is of sufficient complexity to provide **general information** [emphasis added] on how the aquifer system functions at a regional scale. **This model will provide an excellent framework for future area-specific (town, village, city) models and hydrogeologic investigations. ... The CAAM is not able, as currently constructed, to make assessments of potential well yield on a local scale without further refinement.** [emphasis added]”

21. Models are only as good as the data used to construct and run them. As more and more estimates and assumptions are input into models, the less reliable they are. Often, even one incorrectly defined parameter, such as aquifer recharge/infiltration, can significantly alter model results, interpretation, conclusions, and recommendations. Real, field-collected, data is needed to calibrate and effectively run models. The Chemung River Valley Water Study had budgetary constraints that limited calibration of the revised CAAM model version (CAAM02) to new simulations that were compared with and “*adjusted*” (i.e., altered) to best mimic earlier modeling results (CAAM88), thereby relying on model calibration work detailed in Ballaron’s (1988) model report. Clearly, the data and assumptions used in the Ballaron work should be carefully reviewed as they ultimately form the basis of evaluating induced infiltration under drought conditions. Section 6.4 of the Chemung River Valley Water Study addresses many recommended model updates that would improve the reliability and usefulness of the CAAM02 model, including drought simulation, thereby questioning model input information/assumptions used in the 1988 model they ran simulations to mimic before drawing conclusions of their own. As noted by Stearns & Wheler, additional hydrogeologic data is needed to evaluate the effect of pumping on river stage and discharge (i.e., critical information that should be collected and analyzed prior to considering daily sale of large quantities of Corning aquifer water to gas companies):

“If the CAAM is to be used in the future to evaluate management alternatives (such as well spacing) to assess the effect of pumping on river stage and discharge or to delineate recharge areas of production wells, the model will need to be updated and **additional hydrogeologic data will need to be collected** [emphasis added]. ... The use of the STR1 (a recommended model replacement package instead of the one used) allows the model to simulate the interaction between groundwater and surface water in a much more realistic manner, **especially when simulating drought conditions** [emphasis added].”

22. Assorted Chemung River Valley Water Study model simulations and analyses suggest that 19.5 to 24.7 mgd of groundwater could be withdrawn from the existing production well network without excessive dewatering during periods of drought and while allowing sufficient river flow to provide for downstream wastewater assimilative capacity. However, the study concludes, based on their CAAM02 groundwater model, that the sustainable long-term yield of the aquifer in the modeled area is estimated to be 19.5 mgd. The study also concluded that during sustained drought conditions, wells within the valley are recharged primarily from the river system and “*At a total withdrawal from the aquifer of 10.2 mgd, 6.3 mgd of infiltration is induced from the river.*” The study itself questions some of the assumptions used in model development and suggests numerous upgrades. These values are a rough estimate that requires refinement. Determination as to whether there is sufficient groundwater available in the Painted Post portion of the aquifer for outside sale would require aquifer testing. If this has already been done in Painted Post, then hydrogeologic evaluation of the data is needed. An interesting question might be posed since the water commonly shared from the Corning aquifer is used by many (i.e., by the Towns of Erwin and Corning, the City of Corning, the Villages of Painted Post and Riverside, many industrial users, and perhaps others), is whether any one or more of these public entities should be able to sell their common water supply without equally compensating the other users. Does any individual town or industry have ownership rights that allow them to solely profit from the sale of a commonly used natural resource? Also, what are the hydrologic implications of selling water when the actual safe yield of the aquifer has not been determined based on any publicly available or current aquifer testing data?

23. Groundwater professionals recognize that specific assessment of aquifer drawdown, depletion, and recovery requires aquifer specific pumping test information (i.e., drawdown and recovery data obtained from pumping and monitoring/observation wells). Instead of investing in an office-based modeling exercise laced with numerous assumptions and no rigorous means of calibrating the model (unless all or most of Stearns & Wheler's Recommended Updates are conducted; Section 6.4), it would have been beneficial to have conducted a number of pumping/aquifer tests so that actual aquifer characteristics and safe yield could have been determined based on real, rigorously collected, and reproducible drawdown and recovery data. It is this defensible data that should form the foundation of any determination to approve the sale of water based on potential excess aquifer water availability. The Stearns & Wheler report mentions pumping tests. If well-run pumping tests were conducted, this information should be evaluated prior to considering an approval to sell Corning aquifer water.

24. There may be recent, unconfirmed, evidence indicating that the Corning aquifer may have significant safe yield restrictions. John Marvin, in his affidavit, reports that his daughter heard that train cars have stopped running with the previous frequency because the water table dropped and the desired yield was not available, presumably from over-pumping the aquifer. While this is hearsay at this time, it does raise the concern of safe yield and adverse impact to the aquifer. Clearly, this specific issue needs to be investigated. If confirmed, all efforts and permits oriented toward unnecessary extraction of Corning aquifer water (i.e., for private gas industry use and profit) should be rescinded.

25. Stearns & Wheler (2002) conducted a detailed drought analysis complete with recommendations and management plan. As they make clear, additional information is required to better evaluate drought conditions and acceptable water withdrawal quantities. Model results may not adequately address actual worst case drought scenarios. An assessment should be conducted of past water restrictions, the flow and wetted perimeter of the Chemung River throughout future drought conditions, and actual aquifer characteristics based on aquifer test data.

These and other factors are critical in the assessment of safe yield and in determining how much, if any, water should be sold to gas companies.

26. In addition, it would not be prudent to sell large quantities of Corning aquifer water in the absence of an inter-municipality drought management plan, such as that proposed by Stearns & Wheler in 2002. Excessive pumping has the potential of over extending the aquifer such that water demand might, at times, not be met.

27. In the ten years since completion of the 2002 Stearns & Wheler study, the municipalities that rely on the Corning aquifer have not adopted a drought management plan. With no safeguard- threshold criteria in place, excessive aquifer water withdrawal could adversely impact system users, the surficial ecosystem, and not leave sufficient water to assimilate downstream wastewater effluent, especially during periods of drought.

28. The daily extraction of large quantities of groundwater from the Corning aquifer is likely to increase the flow and recharge of groundwater to it from the up-gradient watershed area. This may, in turn, increase the rate of contaminant influx from up-gradient chemical-laden gas wells (existing and new), thereby degrading water quality in the Corning aquifer.

29. The measurement of total dissolved solids (TDS) by Eugene Stolfi and Jean Wosinski (see Stolfi and Wosinski affidavits) provides a strong indicator that extraction of large quantities of groundwater from the Corning aquifer will result in regular degradation of aquifer water quality by reducing natural dilution. TDS reflects the total concentration of dissolved material in water. TDS is widely used in evaluating water quality as it provides a convenient means of comparing waters with one another. It may be comprised of weathered mineral products from the breakdown of bedrock and soil or from a mix of naturally occurring minerals (e.g., cations, anions) and unnatural chemicals (e.g., toxic metals such as barium, cadmium, lead and copper; salts; industrial waste; sewage; fertilizers; pesticides; nitrate), sometimes stemming from contaminant sources. TDS reflects a waters' purity and influences the degree of treatment that may be required prior to distribution. High TDS concentrations in a public water distribution

system may indicate that the quality of the water purification system requires modification. The large magnitude of change in the Stolfi and Wosinski data documents significant change and decreases in TDS concentrations associated with precipitation events. Their testing of municipal and some private water supplies reveals numerous important points, many of which are discussed below.

30. It is common for municipal Corning aquifer water to have TDS concentrations near or above the EPA secondary maximum contaminant level (MCL) of 500 mg/l for drinking water (to at least 870 mg/l in the City of Corning municipal supply; Stolfi affidavit). High TDS levels provide great cause for health concern that warrants immediate investigation, possibly with warnings to users. When assessing the cause of high TDS levels, it is important to fully determine all the chemical parameters that together contribute to these levels. For example, parameters such as iron and manganese may comprise a portion of the total dissolved solids, while other portions may be due to the presence of unnatural contaminants. High TDS is an indicator of a problem. Here, it is a warning that many comprehensive water quality analyses are needed to responsibly and fully assess the cause of MCL exceedences.

31. The presence of high TDS levels document that there is already a water quality problem within the Corning aquifer. Large water withdrawals will exacerbate this problem by reducing the beneficial effect of dilution. Increased aquifer recharge is associated with precipitation events, increased infiltration and decreased TDS concentrations.

32. Dilution of aquifer water by direct infiltration of river water, and possibly up-gradient groundwater associated with rain events, significantly reduces TDS concentrations in the Corning aquifer. Withdrawal of large quantities of Corning aquifer groundwater will lessen this dilution effect. While TDS themselves have an EPA secondary MCL standard that is regularly exceeded, perhaps the larger questions are: what chemicals in the groundwater are the cause of elevated TDS concentrations (TDS is typically considered an indicator parameter used to determine if additional water quality testing is warranted), are they toxic, do they bioaccumulate, do they pose long-term chronic health concerns, and do they have adverse synergistic medical

effects with other chemicals that contribute to TDS concentrations. It would not be prudent to permit large unnecessary water withdrawals in the absence of this information.

33. Reduced TDS concentrations in Corning aquifer water closely associated with precipitation events document that Corning aquifer water is Groundwater Under the Direct Influence of Surface Water (GWUDI). Groundwater that is isolated from direct recharge of surface water exhibits relatively consistent water chemistry with low variability. In contrast to this, variable TDS concentrations measured in Corning aquifer municipal water reveal a lack of consistent water chemistry. The magnitude of the change in TDS concentrations within municipal water systems tapping the Corning aquifer coincident with or following precipitation events demonstrates rapid and direct recharge/infiltration from surface river water directly into the underlying Corning aquifer. This establishes that there is a direct hydrologic connection between surface water and any contaminants present in it and the underlying unconsolidated and highly permeable Corning aquifer. Thus, groundwater within the Corning aquifer is Groundwater Under the Direct Influence of Surface Water (GWUDI). Extraction of groundwater via pumping will, as occurs with infiltration of river water, induce downward infiltration of overlying river water. While the dilution effect may have value relative to TDS concentrations, this direct hydrologic link is the great fear of health departments and water supply distributors because contaminants may be quickly pulled into the water supply. This makes GWUDI aquifer water particularly vulnerable to dangerous biologic contaminants including e-coli, fecal coliform, cryptosporidium, and giardia, as well as spills and upstream waste discharges. Water extraction for gas industry profit unnecessarily increases water quality risk to a large population. The fact that Corning aquifer water is clearly under the direct influence of surface water is cause alone to never permit the unnecessary extraction of Corning aquifer water.

34. Another important issue that needs to be addressed in the environmental impact analysis is water quality protection. The Surplus Water Sale Agreement between the Village of Painted Post and SWEPI LP make it clear that the intended water use is for gas extraction activities: “... use and disposal of the water purchased hereunder and used in SWEPI LP’s oil and

gas extraction activities ...” The addition of toxic chemicals to Corning aquifer water will create polluted water that may move with regional groundwater flow systems and endanger the health, safety and welfare of the people of New York State and Pennsylvania.

35. The use of water from the Corning aquifer to hydrofrack gas wells around Wellsboro, Pennsylvania may degrade and irreparably harm the quality of local aquifers and adversely impact the health of residents in those watersheds. If some of this water is used for the hydraulic fracturing of gas wells in the watershed up-gradient of Painted Post along the Tioga River, toxic additive chemicals will flow with the groundwater flow system and rise upward into the Corning aquifer where all water users will then ingest them, leading to the need for a health clinic such as that now operating in Washington County, PA for individuals with toxic gas field chemicals in their blood streams and with related ailments.

36. Ongoing and massive water use by the gas industry is adversely impacting the quantity of non-renewable freshwater resources available for consumption. As more and more wells and gas fields are exploited, more and more of earth’s finite freshwater is removed from potential use as tens of thousands of wells are hydrofracked. Because it is difficult to relate to the quantities of water involved, a look at the singular planned Painted Post water withdrawal is warranted. By way of comparison, the quantity of daily water extraction/withdrawal planned for gas well hydraulic fracturing (to 1.5 million gallons per day, a billion gallons in less than two years) by the Village of Painted Post may be compared to the volume of New York State lakes. For example, three popular tourist lakes located atop the Shawangunk Mountains in east-central NYS provide excellent comparisons. These lakes, Mohonk (17 acres), Minnewaska (33 acres) and Awosting (93 acres) have approximate volumes of 182 million, 280 million, and 686 million gallons, respectively. Assuming an equivalent daily water withdrawal of 1.5 million gallons, the time required to drain these lakes would be 121 days, 187 days, and 457 days, respectively (0.33 to 1.25 years). These values provide valuable insight into the magnitude of planned water use by just one gas company from a single water source. The Village of Painted Post should recognize that this quantity of drinking water, a non-renewable resource, will regularly and forever be

degraded when toxic and carcinogenic contaminants are added to it for hydraulic fracturing. As such, a full evaluation of the groundwater, from cradle to grave, should be conducted as part of the EIS process. This should include an assessment of water quality statutes and case law specific to degradation of State and Federal natural resources, including an evaluation of the health risks that could result from the sale of Corning aquifer water.

37. There is substantial evidence that toxic hydraulic fracturing fluids injected thousands of feet underground WILL move within regional groundwater flow systems, only to surface in valley bottom settings where our major population centers and aquifers are. It is critically important that this cycle be understood and factored into water sale, distribution, use, and health-based decisions. The extensive joint/fracture network present in the Appalachian Basin is significant from both a gas production standpoint and in terms of an interconnected fracture network capable of serving as contaminant transport pathways. A detailed discussion of groundwater flow paths involved is very much needed. Natural gas and contaminant transport pathways between deep gas horizons and freshwater aquifers are well documented. They include faults, joints, fracture zones, failed cement sheaths and casing material and poorly or not plugged wells. A key problem is not so much the leakage of contaminants through the shale, but leakage along vertical fractures produced or enlarged by fracking, into adjacent high-permeability beds. From there, the groundwater flow is concentrated and relatively rapid. Most fractures remain unidentified.

38. It is important to recognize that toxic contaminants added to water supplied by Painted Post will move with the groundwater flow system to down gradient receptors. Unfortunately, many homeowners in gas fields have had their well water contaminated such that it is NOT fit to drink and or for bathing. Homeowners in Washington County, PA gas fields, for example, and elsewhere report that assorted medical problems occurred after installation of gas wells (e.g., headaches, stomach cramps, blotches on their skin; pers. comm. to HydroQuest). Some or all of these symptoms are consistent with those impacting residents in Washington County, PA gas field area (toxicologist Dr. David Brown, pers. comm. to HydroQuest). It is

unlikely that water treatment systems are capable of reliably removing elevated and proprietary chemicals from some contaminated groundwater. As a professional hydrogeologist, I would never drink or bathe in gas field contaminated water. Given the vast quantity of known and unknown proprietary chemicals that may contaminate homeowner water supplies on any given day, I would not consider it safe to ingest any gas field well water having been shown to have elevated chemical concentrations.

39. Hydrogeologically, slow groundwater flow rates need to be considered. Some contaminants may arrive rapidly via fractures, while others may arrive over decades or centuries. Contaminants we see in the early years following drilling may only reflect the first arrivals. Thereafter, contaminant levels will rise slowly to a peak and then subside slowly. In time, these contaminants will reach down gradient and then down valley locations where larger population centers commonly use groundwater for supply purposes. While chemical concentrations may not always exceed MCLs, long-term chronic exposure to numerous unknown and untested chemicals presents a great health risk (e.g., Dr. David Brown and Dr. Katherine Nolan, pers. comm. to HydroQuest). No standards exist and no testing has been conducted for many of the toxic and carcinogenic chemicals injected underground during the hydrofracking process

40. Clearly, the full breadth of potential adverse environmental impacts associated with the sale and distribution of Corning aquifer water need to be considered when evaluating the potential sale of surplus groundwater.

41. Again, approval of sale of Painted Post groundwater to gas companies will, knowingly, place the health of receptor residents in PA at risk.

42. Because groundwater flow rates are slow, chemical exposure is likely to continue for decades, centuries, or far longer.

43. For the reasons described above, I am of the opinion that, before individual municipalities drawing on the Corning aquifer for their municipal water systems are permitted to engage in water exports from the aquifer, hydrogeologic testing needs to be conducted on production wells in the aquifer to determine the safe yield of the aquifer and an inter-municipal

drought management plan needs to be adopted by the municipalities drawing on the aquifer so that there is agreement about how withdrawals will be restricted in a time of drought. In addition, the issues of water quality as related to large scale pumping and Groundwater Under the Direct Influence of Surface Water (GWUDI) need to be comprehensively addressed.

44. This report is based on information available to me at this time. Should additional information become available, I reserve the right to determine the impact, if any, of the new information on my opinions and conclusions and to modify or supplement this report if necessary.

I state all of the foregoing with a reasonable degree of scientific certainty.

Paul A. Rubin

Sworn to before me this 19th day of December 2012.

Sandra J. Mirrod

Notary Public, State of New York

SEMPRA & COMPANY
Notary Public in State of N.Y.
Elihu County 0106402240
Commission Expires Nov. 17, 2013

Exhibit List

Exhibit A - Paul Rubin Resume

Exhibit B - HydroQuest Gas Drilling Related Work

EXHIBIT A – RESUME [500-506]

Paul A. Rubin

909 County Rt. 2; Accord, New York 12404 (845-657-8111)

E-mail contact: hydroquest@yahoo.com**EDUCATION:**

M.A. - Geology, May 1983, State University of New York at New Paltz. Major fields of study: Hydrogeology, Water Quality and Pollution, Structural Geology, Photogeologic Interpretation. Thesis topic: *Hydrogeology and Structure of the Shawangunk Mountains, Ulster County, NY.*
 B.A. - Anthropology, minor Geology, May 1977. State University of New York at Albany.

SPECIAL SKILLS:

Environmental Protection; Hydrologic and Geologic Characterizations; Land Use Planning & Characterizations; SEQRA reviews; Expert Testimony and Litigation Background; Surface Water and Groundwater Quality Evaluations; Sediment Transport; Evaluation of Remedial Technologies; Geotechnical Assessments; Hydrologic Investigations; Aquifer Testing and Analysis; Karst Hydrology; Rosgen Stream Analyses; Flood Return Analyses; GIS Map Making and Analyses; Photogrammetric Analyses; Affidavit and Report Preparation; Land Protection; Educator; Public Speaking; Public Relations; Research Skills; Strategy Development; Leadership.

EXPERIENCE:**HYDROLOGIST/****HYDROGEOLOGIST:**

1993 - Present Independent Consultant. Stone Ridge, New York. Consulting firm: *HydroQuest*. Provide hydrologic, geologic and land use technical consulting services to environmental groups, Towns, business associations, law firms, and individuals. Assist groups in identifying issues and developing strategies designed to protect groundwater and surface water resources, community character, and wildlife habitat.

HydroQuest work includes SEQRA reviews, review and fatal flaw analyses of consultant reports and environmental impact statements (EISs); environmental scoping report preparation; direction and oversight of heavy equipment operators for field excavation work for well placements, contaminant characterization, and geologic investigations; technical coordination of scientific case development for environmental groups and attorneys; field characterizations; stream and wetland evaluations; geotechnical analyses; hydrologic and geologic mapping; water quality assessments; watershed delineations; watershed analyses; slope analyses; aquifer analyses; hydrogeologic analyses; regulatory assessments; GIS map preparation; public presentations; technical presentations to judges; coordination work with attorneys and Technical Committees; direction and coordination of sub-contract work as needed; strategy development; panel member at Town meetings with legislators; press interactions; report and affidavit preparation. Recently authored many major reports and affidavits on gas drilling & hydraulic fracturing ([see supplemental resume](#)).

Recent project work examples include oversight and analysis of well field pumping tests (for multiple groups including NRDC, NYPIRG, Riverkeeper, and Trout Unlimited) designed to assess impacts on groundwater and surface water stemming from a planned large-scale Catskill Mountain resort; assessment of a town's water quality problem with corrective recommendations; initial hydrogeologic assessment of a spring water source being considered for bottled water use; hydrogeologic-aquifer analysis of a groundwater supply proposed for a Shawangunk Ridge retreat center; SEQRA assessments; and technical presentations and testimony before administrative law judges.

KARST HYDROLOGIST

Howe Caverns, Inc. Cobleskill, New York. 2nd largest natural tourist attraction in NYS

*2004 -
April 2007* Conducted hydrologic and geologic research, produced professional GIS maps and figures, developed educational programs and materials, developed new tourist route, trained guides, provided land use assessments and recommendations, advised the Board of Directors on land use concerns including potential water quality degradation and potential blast-related impacts to cave. Developed and proposed revenue generating strategies. Coordinated with outside educational institutions, professional geologists, learning institutions, and scout groups. Formerly worked in this position half-time prior to change in ownership.

INSTRUCTOR:

*Jan. 2001-
Dec. 2004* SUNY Ulster, Stone Ridge, New York.
Taught ArcGIS, Environmental Geology, Geology, Hydrology, Geography, and Crime Analysis. Coordinator of a Geographic Information Systems certificate program. Developed, obtained, and completed a NYSDEC grant to assess assorted hydrologic and environmental aspects of the Black Creek watershed in Ulster County. Supervision and oversight of numerous professional adult "students", directed GIS-based technical presentations, and coordinated and produced grant products.

College of the Atlantic, Bar Harbor, Maine.
Taught a two week graduate level summer field hydrology and environmental science course for several years, including Rosgen stream assessment.

HYDROLOGIST:

New York City Department of Environmental Protection (NYC DEP), Division of Drinking Water Quality Control, Shokan, New York.

*April 1993-
Jan. 2001* Conducted research and field studies designed to assess the water quality of watersheds. Responsible for directing geologic research designed to assess the sources, geomorphic context and best management practices (BMPs) related to sediments causing turbidity water pollution problems. Hydrologic and geologic work included geologic mapping of glacial sediments, field evaluation of stream channel armoring, morphologic characterization of stream channels (including Rosgen analyses), bedload transport studies, assessment of critical shear stresses, particle size analysis, stream gauging, water quality sampling and trend analysis, chemical and sediment loading calculations, graphic production, report preparation and technical presentations. Assisted other governmental divisions in evaluating lands for possible purchase, conducted geotechnical assessments of structurally unstable stream reaches, evaluated BMP designs. Supervised several Research Assistants.

RESEARCH
SCIENTIST:

Martin Marietta Energy Systems, Inc. April 1993 under contract with the U.S. Dept. of Energy; Oak Ridge National Lab; Environmental Sciences Division, Oak Ridge, TN.

*Aug. 1991-
April 1993* Responsible for hydrogeologic evaluation of groundwater issues (e.g., characterization, monitoring network setup, data analysis, remedial design evaluation) at multiple Oak Ridge Reservation hazardous waste sites. Developed and documented conceptual model of carbonate and shallow storm flow systems comprising pathways of rapid contaminant transport. Work also involved characterization of hydrologic and geochemical trends

RESEARCH SCIENTIST continued:

and thermal infrared photo analysis. Presented results of research at conferences, as well as to DOE management and State and Federal officials. *Served in a Resource Management Organization as the hydrologic lead for the Environmental Sciences Division.*

HYDROGEOLOGIST:

New York State Attorney General's Office; Environmental Protection Bureau, Albany, New York.

*Feb. 1983-
Aug. 1991* Responsible for the design, protocols, coordination, implementation, evaluation, characterization and remediation of many major water and soil contamination sites throughout New York State (e.g., Love Canal, Superfund sites). Designed, performed and supervised chemical field sampling at hazardous waste sites. Evaluated geotechnical and chemical data sets.

Primary responsibilities included coordination of multiple companies along with their respective legal and scientific consultants. Worked with all parties involved to produce test plans and consent decrees to facilitate site remediation. Responsible for the management of the testing, site characterization and technical assessment. Worked with attorneys on summary judgment motions, complaints, trial preparation and depositions. Attorney General's spokesperson at public meetings. Expert witness at SEQRA hearings. Testimony given before the Assembly Standing Committee on Environmental Conservation and Grand Jury. Worked with DOL staff and attorneys to develop office initiatives (e.g., Racketeering; bottled water contaminants). Initiation, development and drafting of legislation.

Supervision of personnel: expert witnesses, consultants, research assistants, interns. Responsible for selection, job descriptions, work schedules, and products.

HYDROGEOLOGIST:

Stone & Webster Engineering Corp., Geotechnical Division, Boston, Massachusetts.

*Oct. 1981-
Feb. 1983* Directly responsible for the planning, preparation, execution, and analysis of pumping tests and a fluid sampling program designed to investigate deep basin groundwater characteristics for the siting of a nuclear waste repository within the Permian Basin of the Texas panhandle. Planned, managed, coordinated, directed, and provided oversight of field operations of a multi-million dollar project. Sub-contractors included Halliburton, Schlumberger, and others.

ACTIVITIES:

Hiking, geologic and hydrologic research, and exploration. Former Captain: Albany-Schoharie County Cave Rescue Team. Made a Fellow of the National Speleological Society in recognition of karst research and water resource protection.

PUBLICATIONS & REPORTS

Over 50 technical publications and over 100 reports and affidavits, many for private clients, environmental groups, towns, and law firms. Projects include land, wetland, water quality, and species protection; aquifer and watershed characterization; mine proposals; development proposals; contaminant assessments; stream hydrology grant work; and flood risk. Some reports are confidential. Leader of geology conference field trips for groups including the New York State Geological Association, the American Institute of Professional Geologists, the Hudson-Mohawk Professional Geologists' Association, the National Ground Water Association, the National Speleological Society, and the International Association of Geochemists and Cosmochemists.

ADDENDUM - SELECTED PUBLICATIONS

**SELECTED
PUBLICATIONS
FROM
PROFESSIONAL
AND
PERSONAL
RESEARCH**

Rubin, P.A., 2009, *Geological Evolution of the Cobleskill Plateau; New York State, USA*, in Veni et al. (eds), Proceedings of the Speleogenesis Symposium of the 15th International Congress of Speleology (joint National Speleological Society & Union Internationale de Speleologie); Symposium: Speleogenesis in Regional Geological Evolution and its Role in Karst Hydrogeology and Geomorphology, Kerrville, Texas. Proceedings, Volume 2, Symposia Part 2, pages 972-978 (published July 2009).

Palmer, A.N. and Rubin, P.A., 2007, *Karst of the Silurian-Devonian Carbonates in Eastern New York State, with emphasis on the Cobleskill Plateau*. Guidebook for the Hudson-Mohawk Professional Geologists' Association Spring 2007 Field Trip, "Carbonate Geology of the Howes Cave Area, Schoharie County, New York", p. 17-35, Trip coleader with Arthur Palmer (April 28, 2007).

Rubin, P.A., Burmeister, K.C. and Folsom, M., 2006, *Karst Resource Management: groundwater protection and developmental considerations in the Kingstown-Rosendale aquifer system*; Ulster County, N.Y., Poster Presentation at the 2005 National Cave and Karst Management Symposium. Report prepared for Scenic Hudson.

Stokowski, S., Rubin, P.A. and Guenther, B., 2006, *History of resource management: conflict and resolution, Howes Cave, N.Y.*, in Rea, G.T., (ed), Proceedings of the 2005 National Cave and Karst Management Symposium.

Rubin, P.A. and Stokowski, S., 2004, *Karst, Caves, and Quarries*. Guidebook paper for the American Institute of Professional Geologists (AIPG), Annual Meeting. Field trip co-leader.

Rubin, P.A. and Washington, G., 2004, *Water quantity and quality considerations specific to development on the flank of the Shawangunk Mountain Ridge, Southeastern NYS*. Abstracts Northeast Natural History Conference VIII. N.Y. State Museum Circular 66: p. 53.

Rubin, P.A., Adickes, D.M., Cunningham, T., Davidson, D., Hurl, J., Kiyon, J.R., Preuss, P., Ramsay, W., Schultz, B. and Washington, George, 2004, *Application of GIS technology to assess visual impacts of development: Shawangunk Ridge case study, southeastern NYS*. Abstracts Northeast Natural History Conference VIII. N.Y. State Museum Circular 66: p. 52-53.

Adickes, D.M., Preuss, P., Rubin, P.A., and Thompson, J., 2004. *GIS assessment and study of rare and threatened avian species living in the Shawangunk Mountains in Southeastern NYS*. Abstracts Northeast Natural History Conference VIII. N.Y. State Museum Circular 66: p. 38.

Kiyon, J.R., Washington, G., and Rubin, P.A., 2004, *GIS visual impact analysis of a proposed housing development below Minnewaska State Park Preserve in the Shawangunk Mountains of the Mid-Hudson Valley in New York State*. Abstracts Northeast Natural History Conference VIII. N.Y. State Museum Circular 66: p. 47.

Cunningham, T., Davidson, D., Hurl, Rubin, P.A., and Ehrenschaft, P., 2004, *Using GIS technology to project various land-use and economic scenarios for the northern Shawangunk Ridge area; Southeastern NYS*. Abstracts Northeast Natural History Conference VIII. N.Y. State Museum Circular 66: p. 41-42.

Palmer, A.N., Rubin, P.A., Palmer, M.V., Engel, T.D., and Morgan, B., 2003, *Karst of the Schoharie Valley, New York*. Guidebook for the New York State Geological Association Diamond Jubilee Field Conference (75th Annual Meeting), p. 141-176, Trip coleader.

Rubin, P.A., Morgan, B., and Palmer, A.N., 2003, *Howe Caverns resource protection: hydrology and land-use analysis; Schoharie County*, New York State. Abs. Northeastern Science Foundation Silver Jubilee Anniversary Symposium, Proceedings volume, p. 25-26.

Rubin, P.A., Hubsch, R., Albrechtsen, C.A., Black, G., Folsom, M., Keller, J., Morgan, B., Ortega, A., Rodden, M., Schultz, B., Terzella, D., and Washington, G., 2003, *Watershed management and protection planning based delineation of critical environmental areas via GIS analysis*. Abs. Northeastern Science Foundation Silver Jubilee Anniversary Symposium, Proceedings volume, p. 13.

Hubsch, R., Morgan, B., Black, G., Folsom, M., France, N., Keller, J., Ortega, A., Post, J., and Rubin, P.A., 2003, *Development of a GIS-based land-use coverage: Black Creek and Swarte Kill watersheds, southeastern New York State*. Abs. Northeastern Science Foundation Silver Jubilee Anniversary Symposium, Proceedings volume, p. 9-10.

Rubin, P.A., Waines, R., Washington, G., Ortega, A., Albrechtsen, C.A., Hubsch, R., Folsom, M., Keller, J., Morgan, B., and Schultz, B., 2003, *Hydrology and geology of the Swarte Kill and Black Creek basins, eastern New York State*. Abs. Northeastern Science Foundation Silver Jubilee Anniversary Symposium, Proceedings volume, p. 12.

Rubin, P.A., Engel, T., Nardacci, M. and Morgan, B.E., 2002, *Geology and paleogeography of Mount Desert Island and surrounding area, Maine*. Guidebook paper National Speleological Society annual meeting, Camden, Maine, p. 47-91, Trip leader.

Rubin, P.A., Schultz, B. and Haberland, P., 2002, *Hydrologic, land use, and historic concerns relative to the Rosendale mining industry*. Abs. National Speleological Society annual meeting, Camden, Maine, p. A-27.

Rubin, P.A. and Morgan, B., 2002, *Relict sea caves record temporary coastal stillstands*. Abs. National Speleological Society annual meeting, Camden, Maine, p. A-26-A-27.

Morgan, B., Albrechtsen, C., Dido, R., Hubsch, R., Rubin, P.A., Sheeley, D., Skerritt, F. and Vaeth, L., 2002, *Development of a GIS-based land-use coverage: Black Creek Watershed, Southeastern NYS*. Abs. Northeast Natural History Conference VII. N.Y. State Museum Circular 64: p. 50-51.

Hubsch, R., Albrechtsen, C., Dido, R., Morgan, B., Rubin, P.A., Sheeley, D., Skerritt, F., Terzella, D. and Vaeth, L., 2002, *Critical environmental area delineation in the Black Creek Watershed, NYS via GIS analysis*. Abs. Northeast Natural History Conference VII. N.Y. State Museum Circular 64: p. 51.

Sheeley, D.A. and Rubin, P.A., 2002, *Land-use preservation scenarios in the Black Creek Watershed using GIS; NYS*. Abs. Northeast Natural History Conference VII. N.Y. State Museum Circular 64: p. 51.

Schultz, B., Rubin, P.A. and Haberland, P., 2002, *GIS-based historic inventory of early cement district industrial artifacts: Southeastern NYS*. Abs. Northeast Natural History Conference VII. N.Y. State Museum Circular 64: p. 40.

Rubin, P.A. and Morgan, B., 2002, *Geomorphic reconstruction of emerged and submerged coastlines using GIS technology, Mount Desert Island, ME*. Abs. Northeast Natural History Conference VII. N.Y. State Museum Circular 64: p. 39.

Rubin, P.A. and Privitera, J.J., 1997, *Engineered and unregulated degradation of karst aquifers: Two case studies in New York State, USA*. In The Engineering Geology and Hydrogeology of Karst Terranes, Beck & Stephenson (eds), Proceedings of The Sixth Multidisciplinary Conference on Sinkholes and the Engineering and Environmental Impacts of Karst; Balkema, Rotterdam; p. 467-476.

Rubin, P.A., Engel, T., and Nardacci, M., 1995, *Geomorphology, paleoclimatology and land use considerations of a glaciated karst terrain, Albany County, New York*. Guidebook for joint meeting of the New York State Geological Association (67th Annual) and the American Association of Petroleum Geologists. Trip leader, p. 81-107.

Rubin, P.A., 1995, *The geology of Clarksville Cave, Albany County, New York*. Guidebook for joint meeting of the New York State Geological Association (67th Annual) and the American Association of Petroleum Geologists. Trip leader, p. 251-273.

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Rubin, P.A. and Lemiszki, P.J., 1992, *Structural and stratigraphic controls on cave development in the Oak Ridge area, Tennessee*. Tennessee Water Resources Symposium (5th, Nashville, TN., Oct. 1992), Proceedings. American Water Resources Association, Nashville, TN, p. 111-117.

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Palmer, A.N., Rubin, P.A., and Palmer, M.V., 1991, *Interaction between karst and glaciation in the Helderberg Plateau, Schoharie and Albany Counties, New York*. Guidebook for New York State Geological Association Annual Meeting, Oneonta, New York, p. 161-190.

Palmer, A.N., Palmer, M.V., Porter, C.O., Rubin, P.A., and Mylroie, J.E., 1991, *A geological guide to the karst and caves of the Helderberg Mountains, Schoharie and Albany counties, New York*. Guidebook paper for National Speleological Society annual meeting, Cobleskill, New York, p. 105-167.

Rubin, P.A., 1991, *Modification of preglacial caves by glacial meltwater invasion in East-Central New York*. Appalachian Karst Symposium, Proceedings. National Speleological Society, Radford, Virginia, p. 91-100.

Rubin, P.A., 1991, *Flow characteristics and scallop forming hydraulics within the Mill Pond Karst Basin, East-Central New York*. Appalachian Karst Symposium, Proceedings. National Speleological Society, Radford, VA., p. 101-108.

Rubin, P.A., 1991, *Emerged sea caves and coastal features as evidence of glacio-isostatic rebound, Mount Desert Island, Maine*. Appalachian Karst Symposium, Proceedings. National Speleological Society, Radford, Virginia, p. 75-83.

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Rubin, P.A., 1981, *New Aspects of the stratigraphy and structure of the Shawangunk Mountains, Southeastern New York*. Abs. Geol. Soc. Amer. N.E. Ann. Mtg., Bangor, Maine.

Egemeier, S.J., Liff, C.I., Smiley, D., and Rubin, P.A., 1981, *The safe yield of the "sky" lakes of the Shawangunk Mountains of Southeastern New York*. Abs. Geol. Soc. Amer. N.E. Ann. Mtg., Bangor, Maine.

EXHIBIT B – HYDROQUEST GAS DRILLING RELATED WORK [507-510]

Paul A. Rubin

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E-mail contact: hydroquest@yahoo.com

Most HydroQuest reports, figures, and Fact Sheets referenced at assorted web pages below may be viewed at: <http://hydroquest.com/Hydrofracking/>

Paul Rubin/HydroQuest Gas Drilling Related Reports, Presentations, Affidavits, Meetings & Interviews:

Oct. 2011 to Present – Advancing hydrogeologic and chemical characterization of hydrofracturing related groundwater contamination cases in support of active, high-profile, litigation with a number of law firms. Work involves site field work, groundwater sampling, hydrogeologic characterization, mediation sessions, technical guidance, and affidavit and report preparation. Many settlement agreements have been completed in Dimock, PA cases.

November 2012 – Constructing an affidavit detailing hydrologic problems associated with selling aquifer water to the gas industry for use as hydraulic fracturing water for a location in New York State. For Sierra Club and others. Affidavit is in opposition to Respondents' motion to dismiss and/or for summary judgment relative to the sale, distribution, and planned use of potable waters of New York State as naturally occurs within a primary unconsolidated aquifer. .

October 17, 2012 – Report preparation: *Hydrogeologic Concerns Regarding Hydraulic Fracturing within the Muskingum River Watershed in Eastern Ohio with Justification & Recommendations in Support of a Drilling Moratorium within Reservoir Watersheds and Statewide Legislation Banning Hydraulic Fracturing* for South-east Ohio Alliance to Save Our Water; 42 pages with 10 figures (includes earthquake probability analyses). Technical guidance provided on an ongoing basis.

September 15, 2012 – Report preparation: *Bedrock Geology of the Marcellus and Utica Shales in the Town of Marbletown, Southeastern New York State with Justification & Recommendations in Support of Legislation Banning Hydraulic Fracturing* for Stand for Land; 15 pages with figures including GIS maps.

September 6, 2012 – Invited speaker before full Dutchess County Legislature, NYS. Topic: *Hydraulic Fracturing Brine Prohibition Act*. Written technical supportive statement provided in advance on 8-17-12.

August 14, 2012 – Fact Sheet constructed. Topic: *Key Reasons to Ban Hydraulic Fracturing in NYS*. Provided to NYS DEC and NYS Governor's office by HydroQuest in support of postponing hydraulic fracturing decision in NYS (2 pages with numerous references).

August 13, 2012 – Hydrogeologist educator at meeting with NYS Governor Cuomo's executive staff (Robert Hallman, NYS Deputy Secretary of Environment, Basil Seggos, NYS Assistant Deputy Secretary of Environment and DEC official) to discuss the independent science on hydrofracking in support of a ban on hydraulic fracturing in NYS (hosted by Grassroots Environmental Education at the Capitol in Albany). Fact Sheet and hydrofracking related material provided.

June 26, 2012 – Report preparation: *Hydrogeologic Implications of Using Partially Treated Landfill Leachate in the Hydraulic Fracturing Process for the Delaware Riverkeeper Network*; Report addresses a first attempt by the gas industry to use partially treated landfill leachate as fracking water in PA. This would be an extremely poor precedent that would increase contaminant loading to regional aquifer flow systems; 14 pages.

June 12, 2012 – Report preparation: *Hydrologic and Environmental Rationale to Bury Gas Pipelines using Horizontal Directional Drilling Technology at Stream and River Crossings* for the Delaware Riverkeeper Network; Transcontinental Gas Pipeline Company, LLC - Brandywine Creek case example used; 14 pages plus 2 figures and flood return analysis.

May 30, 2012 – Panel Member/Speaker in PA. Topic: *PA House Bill No. 1950 (Act 13) – Hydrogeologic Considerations with Implications for Degradation of Groundwater and Surface Water Quality in Berks Co., PA*.

April 25, 2012 – Testified before the NYS Senate in Albany, NY. Topic: *Hydrogeologic Justification for Banning Hydraulic Fracturing throughout New York State and the Delaware River Basin* (Testimony and report provided at the Senate Democratic Conference Public Hearing on Fracking Legislation in Albany, New York by HydroQuest and Mid-Hudson Geosciences)

April 19, 2012 – Panel Member/Speaker in PA. Topic: *PA House Bill No. 1950 (Act 13) – Hydrogeologic Considerations with Implications for Degradation of Groundwater and Surface Water Quality in the Newark Basin, Bucks Co., PA.*

April 17, 2012 – Testified before the Ulster County NY Legislature on adverse contaminant transport issues related to proposed spreading of hydraulic fracturing derived brine wastes on roads. Testimony and official statement provided in support of legislation designed to ban brine dispersal to groundwater aquifers and waterways.

January 23, 2012 - Speaker at Press Conference. Topic: *Fracking, Aquifers and Earthquakes are Connected.* Conference held in Albany, NY in Legislative Office Bldg. press room before multiple TV stations and other press entities. Open discussion, Q&A, and initial presentation shared with Dr. Arthur N. Palmer, hydrologist. Press conference sponsored by Schoharie Valley Watch and Sustainable Otsego. This press conference preceded a major anti-fracking rally in the capital area that called for a legislative ban on hydraulic fracturing.

January 23, 2012 – Assemblyman Office Meeting. Private meeting between Paul Rubin and Dr. Arthur Palmer and representatives of Assemblyman Robert K. Sweeney's [Chairman of the New York State Assembly Standing Committee on Environmental Conservation] office. Sweeney requested the meeting to address questions they had relating to local and regional groundwater flow as related to transport of hydrofracking contaminants.

January 17, 2012 – Report completed on the *Planned Quarry Road Mine – Karst Hydrology & Gas Drilling Concerns; Perryville, New York* for the Sullivan Citizens Alliance (Chittenango, NY). Report details concerns relative to the karst hydrology and potential environmental impacts associated with a proposed Oot Quarry application (19 pages plus 7 figures with GIS maps).

January 10, 2012 - *Aquifer & Karst Protection Considerations in Schoharie and Other New York State Counties* (Comments on the NYS High-Volume Hydraulic Fracturing 2011 revised draft SGEIS). Technical report that addresses the need for tracer addition to fracking fluids, vulnerability of karst terrains, limitations of well bore sealant materials, aquifer protection and other issues. In addition, analyses are provided in support of an empirically-based 2,100 foot setback distance from well arrays, the high probability of well bore sealant material failure from earthquake events, and a flood return analysis supporting no well pads within 500-year floodplains. Documentation was provided in support of NYSDEC withdrawing their revised draft SGEIS on gas drilling regulations. [Full report, related figures and analyses may be viewed at: <http://hydroquest.com/Schoharie/>]

December 2011 – Contributor to *Protecting Pennsylvania Communities from the Shale Rush: A Handbook for Local Residents and Officials* by Delaware Riverkeeper Network, 76 pages.

December 6, 2011 – Speaker at Press Event. Topic: *Technical Justification in Support of Requiring Cabot to Immediately Resume Water Deliveries to Adversely Impacted Residents of Dimock, PA* [Public statement made at a press event held in Dimock, PA on Dec. 6, 2011 with associated 5-page technical statement]

November 23, 2011 – Authored an affidavit in support of Dimock, PA Petitioners' Petition for Temporary Supersedeas requesting that the Pennsylvania Environmental Hearing Board restore the *status quo* to conditions prior to the Pennsylvania DEP's determination that Cabot Oil and Gas Corporation may cease supplying affected residents of Dimock, PA with temporary potable water due to Cabot's compliance with paragraph 6 of the December 15, 2010 Consent Order and Settlement Agreement, Section 208 of the Oil and Gas Act and related environmental regulations. The affidavit addresses geologic and hydrogeologic factors governing water quality degradation of homeowner wells. The affidavit is Exhibit J of a legal petition filed by the law firm of Napoli Bern Ripka Shkolnik & Associates, LLP.

November 17, 2011 – Presented a Power Point presentation in West Virginia at a Special Meeting of the County Commission before commissioners, town and planning board members, the public, and the press titled: *Hydrofracking, Karst Vulnerability and Degradation of Water Resources*. The final recommendation provided was to enact a temporary moratorium to be followed by a permanent statewide ban on hydraulic fracturing.

November 15, 2011 – Drafted a 10-page report on behalf of Damascus Citizens for Sustainability addressed to the Division of Municipal and Residual Waste, Bureau of Waste Management's Special Conditions General Permit WMGR064 addressing hydrologic issues associated with *Natural Gas Brine Dispersal on Roadways and the Risk of Surface and Groundwater Contamination*.

October 15, 2011 – Led an all day field course addressing *Hydrology & Hydrofracking* for The Heldeberg Workshop based near Albany, New York. The course was designed for teacher development and 8 credit hours of in-service credit. Abridged course description: A hands-on field look at aquifers that supply our wells and streams with pure water. While touring local nature preserves, take a close look at the major aquifer types (unconsolidated, fractured bedrock, karst) and join in discussions of how groundwater and contaminants move in them, how freshwater aquifers are physically separated from deep, saline, waters and how they provide the sustained base flow to our streams. Hydraulic fracturing (hydrofracking) will be extensively discussed, inclusive of means of methane and contaminant movement from gas-rich shale beds to explosive flares at kitchen taps.

October 2011 - January 2012 – Developing an affidavit for a legal challenge designed to force the Delaware River Basin Commission (DRBC) and the Army Corps of Engineers to follow federal environmental laws and do a comprehensive environmental impact study before they issue their draft gas rules as final and before any drilling starts. The affidavit will address numerous hydrogeologic/technical issues and will detail likely “irreparable harm” to freshwater aquifers and streams should gas drilling under the proposed regulations be advanced. The affidavit will be filed in federal court by the Delaware Riverkeeper Network.

October 6, 2011 – Presented expert testimony to the New York State Assembly Standing Committee on Environmental Conservation in Albany, NY. Testimony subject: *Protection of Freshwater Aquifers: Hydrogeologic and Seismic Threshold Requirements*. Received a personal thank you letter from Robert Sweeney, Chairman of the Assembly ECC.

September 8, 2011 – Freedom from Fracking plenary conference speaker for the Delaware Riverkeeper Network at a conference in Philadelphia, PA called Shale Outrage. Plenary talk topic: *Gas Wells & Hydraulic Fracturing: A Means to Long-Term Aquifer Degradation*.

September 8, 2011 – Freedom from Fracking workshop conference presenter for the Delaware Riverkeeper Network at a conference in Philadelphia, PA called Shale Outrage. Talk and workshop topic: *Our Aquifers, Our Drinking Water: Casualties of Gas Development*.

September 6, 2011 – Panel Presenter: Provided expert testimony before the Citizens Marcellus Shale Commission (Southeastern Pennsylvania Hearing in Philadelphia) detailing hydrogeologic thresholds that must be met in order to safeguard freshwater aquifers in perpetuity.

September 2011 – Completed a second two-sided Environmental Fact Sheet for the Delaware Riverkeeper summarizing 1) key short and long-term risks to groundwater quality in Delaware River Basin aquifers stemming from gas drilling in a seismically active region, and 2) a recommended preliminary hydrologic test procedure designed to reduce contamination of homeowner wells proximal to proposed gas wells. Fact Sheet title: *What the experts have to say about ... Natural Gas Drilling, Seismic Risk & Aquifer Degradation*.

July 8, 2011 - Preparation of a report for the Sierra Club (Pennsylvania Chapter) on the Underground Injection Control Permits Issued by the Environmental Protection Agency for Bittering Wells #1 and #4 for disposal of fracking-related waste. This work entailed review of technical material, preparation of graphics, and collaboration with Katherine Beinkafner (Mid-Hudson Geosciences). The report and thirteen related graphics may be viewed at: <http://hydroquest.com/Bittering/>.

June 8, 2011 – Presentation at a special joint meeting of the Town of Sullivan Town Council, Zoning Board of Appeals, and Planning Board in Chittenango, New York (Madison County). Power Point presentation title: *Hydrologic Considerations Relative to Mining in a Karst Terrain & Contaminant Risks to Fresh Groundwater Supplies Stemming from Hydraulic Fracturing*.

June 2011 – Constructed a two-sided Environmental Fact Sheet for the Delaware Riverkeeper summarizing key long-term risks to groundwater quality in Delaware River Basin aquifers, as well as other aquifers throughout the world, stemming from gas drilling. Fact Sheet title: *What the experts have to say about ... Natural Gas Drilling & Aquifer Protection*. The Aquifer Protection Expert Fact Sheet may be viewed and downloaded at: <http://hydroquest.com/DRBCfigures/>.

April 9, 2011 - Prepared comments on the DRBC draft Natural Gas Development Regulations; Article 7 of Part III – Basin Regulations on behalf of the Delaware Riverkeeper Network, 72 pages with an additional 21 figures. The report and related figures, plus a related summary June 2011 Aquifer Protection Expert Fact Sheet, may be viewed and downloaded at: <http://hydroquest.com/DRBCfigures/>.

April 2, 2011 - Interviewed by Sabrina Artel for a radio talk show. This is part of her Frack Talk - The Marcellus Shale Water Project. Items discussed included flaws in current gas drilling technology that will lead to widespread groundwater contamination in gas fields, failure mechanisms in “protective” cement sheaths and steel casing, life of production wells vs. life of aquifers, and seismic risk in the Delaware River Basin.

February 18, 2011 – Delivered a Power Point presentation for Delaware Riverkeeper as part of a day-long webcast workshop on Translating the DRBC Gas Rules. Talk title: *How the draft rules address hydrogeologic impacts of gas development*.

February 10, 2011 - Representative of several Towns (Highland, Lumberland et al.) at a special work session of the Upper Delaware Council’s project review committee. Assisted the UDC in their review of the DRBC’s Draft Natural Gas Development Regulations in Narrowsburg, New York.

November 15, 2010 – Prepared a report on behalf of the Delaware Riverkeeper Network and the Damascus Citizens for the Sustainability for the Delaware River Basin Commission Consolidated Administrative Hearing on Grandfathered Exploration Wells. (22 pages, plus 10 figures and 3 addenda). The report and 10 related figures may be viewed and downloaded at: <http://hydroquest.com/Riverkeeper/>.

September 11, 2010 – Provided comments on the Scope of the Proposed EPA Study of Hydraulic Fracturing. Prepared on behalf of Otsego 2000; 14 pages with 7 figures. The report and figures may be viewed and downloaded from the Otsego 2000 web page: [<http://63.134.196.109/documents/HydroQuestEPAComments9-11-10withfigures.pdf>].

December 30, 2009 - Provided significant geologic and hydrologic input into a 45-page letter authored by Zarin & Steinmetz, attorneys for Otsego 2000. The letter provides extensive comments on the Draft Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low Permeability Gas Resources (“DSGEIS”). The letter may be viewed and downloaded at: <http://63.134.196.109/documents/DSGEISCommentLtr123009.pdf>.

**AFFIDAVIT OF PAUL RUBIN, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON JANUARY 25, 2013
[511-522]**

1966919

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Laws and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

State of New York,
County of Ulster, ss.:

PAUL RUBIN, being duly sworn, deposes and says:

1. I am a hydrogeologist and hydrologist with thirty years of professional experience. I earned a B.A. degree from the State University of New York at Albany in 1977 and an M.A. degree in geology with a specialty in hydrogeology from the State University of New York at New Paltz in May, 1983. My professional experience includes work conducted for the New York State Attorney General's Office (Environmental Protection Bureau), Oak Ridge National Laboratory (Environmental Sciences Division), the New York City Department of Environmental Protection, and as an independent environmental consultant as President of HydroQuest. My educational background and professional experience are more fully set forth in my Curriculum Vitae, attached as Exhibit A.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

2. Within the broad field of hydrology, I have specialized expertise in both surface water and groundwater hydrology. I have conducted detailed assessments of streams, wetlands, watersheds, and aquifers for professional characterizations, for clients and as part of my own personal research. I have authored numerous reports and affidavits related to this work and have made presentations to judges, juries, the assembly, the senate, and others. In addition, I have published papers and led all-day field trips relating to this work at professional conferences.

3. More recently, I have been called upon by a number of environmental groups to address hydrogeologic and environmental issues associated with hydraulic fracturing. A synopsis of this work is attached as Exhibit B. The content and conclusions of this affidavit are based upon generally accepted scientific principles. Issues that are raised are based upon significant research and my geologic and hydrogeologic expertise.

4. This affidavit addresses the need to conduct a cumulative impact analysis of the Corning aquifer before considering selling groundwater to any new large-scale users, inclusive of the gas industry. This necessary analysis has not been conducted. Failure to do so may result in episodic dewatering of the unconsolidated aquifer such that the water demand of existing users is not able to be met. The potential withdrawal of large water quantities significantly beyond current demand should be approached from the same hydrogeologic testing standpoint as is required for approval of any major water supply for a proposed development project. This affidavit supplements my affidavit dated December 19, 2012.

5. Approval of a new or significantly expanded groundwater supply for a proposed new development project must comprehensively assess current water demand, projected future water demand, and provide rigorous hydrogeological proof of the safe yield of the target aquifer. Similarly, significant expansion of water withdrawal from the Corning aquifer should have no

less stringent approval criteria. The determination of the safe yield of an aquifer is made through the analysis of aquifer water level drawdown and recovery data collected from one or more production and monitoring wells. When assessing the hydrogeologic characteristics of an areally expansive aquifer, it is necessary to conduct a number of 72-hour pumping tests simultaneously within the aquifer to learn of its ability, or not, to provide large water withdrawals continuously for long periods of time. To date, this has not been conducted.

6. Information available to me does not contain the detailed pumping drawdown and recovery data needed to characterize important aquifer parameters and make 180-day drawdown projections. Neither the Stearns & Wheler, LLC 2002 Chemung River Valley Water report nor the 1988 Susquehanna River Basin Commission study (Ground-Water Flow Model of the Corning Area, New York by Paula Ballaron) provide the hydrogeologic aquifer test data and graphs needed to assess the safe yield of the Corning aquifer in individual locations or comprehensively throughout its areal and vertical extent. Ballaron states:

“Although these aquifers are very productive, this heavy reliance on ground water has created depressed ground-water levels in the aquifers underlying the City of Corning and raises concern for the availability of the resource during an extreme drought.”

The SRBC study references pumping tests conducted by SRBC, Hydro Group, Inc., and Stearns & Wheler which, if available, and if of sufficient quality and duration might shed some light on aquifer parameters.

7. Similarly, monthly water use data for Painted Post provides no hydrogeologic means or data that can be used to assess the safe yield of the Corning aquifer in Painted Post or elsewhere. A graph of 1946 to 1962 water levels in observation well Sb 240 in Corning, New York shows water level fluctuations within about a 15 foot vertical range (2012 Town of Corning Master Plan, Chapter 7, Water Resources page 6). Apparently, this observation well name refers to a well where water levels were regularly taken vs. an observation well used to

monitor drawdown effects from a production well actively being pumped. The aquifer thickness is reported to be between 20 and 40 feet (Master Plan). It is entirely feasible that, at times of low aquifer levels, production wells in the Corning aquifer, perhaps on or near Sb 240, may have had little remaining thickness of the saturated aquifer. This concept is bolstered when viewing this graph because the water level in the aquifer remains depressed for long periods of time seasonally with no daily recovery to higher water table levels seen at other times. For example, the depressed water level in the aquifer stayed significantly lowered for months in the late 1960 to early 1961 time period. Clearly, then, there is some aquifer discharge value above which the entire saturated thickness of the aquifer would become dewatered. To approve additional large-scale water withdrawals from the Corning aquifer without conducting rigorous, reproducible, hydrogeologic testing with accompanying detailed mapping of aquifer thickness would potentially jeopardize water availability to other users and even other municipalities.

8. A map of estimated Corning aquifer well yields was produced by Todd Miller (1982; New York State Department of Health. Well Yield Survey Map; <http://pubs.usgs.gov/of/1982/0085/plate-5.pdf>). The note on the map points out that the well yield values are estimates of the maximum long-term yields of individual wells completed in the aquifers. Detailed analysis of material addressed in map references cited (Randall, 1972; Reisenauer, 1977; engineering consultants pumping tests) might provide hydrogeologic data that could be analyzed if it could be obtained. At this time, no substantive hydrogeologic data is available that can be used to determine the safe yield of the Corning aquifer or the cumulative impact of increased water withdrawal from the aquifer.

9. The New State Department of Environmental Conservation provides guidance on Pump Test Requirements, inclusive of simultaneous well testing. To approve any water supply application, the NYS Department of Environmental Conservation "*must determine that the proposed well or wells will adequately meet the needs of the applicant without adversely*

affecting others who may rely on the same aquifer.” To advance this, NYSDEC has developed Recommended Pump Test Procedures for Water Supply Applications (Public Water Supply Permit Program Application Processing [Appendix 10, TOGS 3.2.1]).

10. Comprehensive pumping or aquifer testing of the Corning aquifer must be conducted in accord with a number of key NYSDEC TOGS 3.2.1 recommendations. They state that “[t]he pump test must be performed at or above the pumping rate for which approval will be sought in the water supply application. If multiple wells are to be pumped simultaneously to achieve the necessary yield, the pump test should incorporate such a pumping plan.” Approval of the extraction of new large-scale water withdrawals from the Corning aquifer should follow NYSDEC guidelines. This includes simultaneous pumping of existing or new production wells at maximum design capacity for at least 72 hours. Drawdown and recovery data collected during these tests is then analyzed to determine such things as A) whether the anticipated pumping rates will dewater production wells and the aquifer, and 2) the safe yield of the aquifer. If high pumping rates were ultimately required to meet projected water demand, it is possible that these production wells would be dewatered. Should that occur, the water availability in the Corning aquifer might drop precipitously, thereby jeopardizing the availability of groundwater for existing users. It is critical to know the safe yield of the Corning aquifer so that it can be compared with both existing and future water demands when assessing potential cumulative impacts to the aquifer.

11. A critical task required for completion of a cumulative impact analysis is a hydrogeological analysis to collect data needed to project the long-term availability of Corning aquifer water. This long term projection is an essential component of the environmental analysis of any development proposal or, in this case, for expanded development of the Corning aquifer. This is especially necessary under SEQRA which, here, should be considered to apply because a number of municipalities and independent users may potentially be adversely

impacted. The “hard look” contemplated by SEQRA should apply here and full environmental assessment should be conducted. The DEC T.O.G.S. require 180-day semi-log plots to assess long term water supply adequacy. To the best of my knowledge, neither pumping test data nor these semi-log plots exist for any portions of the Corning aquifer. Similarly, NYSDOH Part 5, Subpart 5-1 Standards for Water Wells – Appendix 5B (Section 5-B.4 Well Yield and Water Flow) requires applicants to provide evidence that a water well will produce a sustainable flow rate for an extended period of time. Again, to the best of my knowledge, no such hydrogeologic evidence exists (i.e., no raw hydrogeologic data as is needed by Planning Boards, NYSDEC or by independent hydrogeologists to plot and analyze as the basis of extraction approvals) and no appropriate hydrogeologic testing and monitoring were conducted to assess Corning aquifer water availability (i.e. safe yield). To approve large-scale aquifer water withdrawal without a cumulative impact analysis that assesses the safe yield of the aquifer at multiple locations within it, as well as existing and future water demands would be ill-advised.

12. Before approvals for large-scale aquifer withdrawals are approved for public, private or gas industry purposes, the cumulative impact of these withdrawals on the aquifer and existing users must be fully assessed. This assessment must include all existing users (metered and unmetered), including municipal, government, private, agricultural, fire, industrial and other users. This information must be comprehensively gathered for all areas overlying the Corning aquifer. It must also include the projected water demand for projects known to be advancing toward approval or in the early phases of consideration (e.g., new hotels; I-86 corridor development).

13. Determination that expanded extraction of Corning aquifer water would, or would not, deplete the aquifer requires full simultaneous pumping of production wells constructed within several locations within the aquifer to assess well interference and potential aquifer dewatering and proper hydrogeologic analysis of actual well-specific drawdown and recovery

data, each correctly plotted on semi-logarithmic graph paper. Simultaneous well testing or, apparently any individual pumping tests with publically available data, have not been conducted. Also, standard constant rate testing, accepted as industry practice, has either not been conducted or is not available for analysis. Finally, the hard data required by hydrogeologists (and approving agencies) to properly assess potential project water availability either does not exist or has not been provided, despite numerous FOI requests.

14. The hydrogeologic data, assessment of hydrologic boundary conditions, hydrologic analysis, graphics and interpretation needed to determine the long-term safe yield of the Corning aquifer does not exist. Expanded extraction of Corning aquifer water should not be approved in the absence of completion of an up-to-date 2013 cumulative impact analysis that provides a detailed and accurate breakout of Corning aquifer water demand and hydrogeologic analysis of long-term water availability.

15. Hydrogeologic testing, graph construction, aquifer analysis of drawdown and recovery data from simultaneous pumping of multiple production wells, and interpretation are required before there is a sound basis for potential approval of increased withdrawal of Corning aquifer water based on the adequacy of the groundwater supply. Absent such data, it is possible that long-term pumping at increased project water demand will dewater the aquifer, may dewater any nearby homeowner wells, and will not support significantly increased water withdrawals. At present, there is no valid hydrogeologic/scientific basis for approving increased withdrawal of Corning aquifer water or basis upon which to believe increased groundwater withdrawal will not deplete the available water supply or neighboring wells, or that adverse environmental impacts will not result.

16. Increased groundwater withdrawal from the Corning aquifer may dewater portions of the aquifer where the saturated thickness between the top and base of the aquifer is, at

times, small. An important concern that needs to be thoroughly addressed as part of the cumulative impact assessment is the thickness of the saturated aquifer present during dry periods, the duration of the lowered water table (both naturally occurring and resulting from groundwater withdrawal), and the ability of the water table/aquifer to recover sufficiently should additional stress be placed on it (i.e., from increased water withdrawals). An example is used here to illustrate this concept. While sand and gravel aquifers (e.g., Corning aquifer) have high hydraulic conductivity (the capacity of a porous medium to transmit water; e.g., how much water will move through the formation) and coefficient of transmissivity (generally, rate at which water flows through the full saturated thickness of an aquifer) values, if the vertical and lateral extent of the aquifer are limited (i.e., by geologic and hydrologic boundary conditions) increased water withdrawal may, at times, dewater the aquifer. An example of significant natural seasonal fluctuation in the water table elevation of a sand and gravel is present within USGS groundwater well data that has been recorded in a sand and gravel well near Kanona, New York in Steuben County (USGS well 422445077203301 local number Sb-472; see: http://nwis.waterdata.usgs.gov/nwis/dv/?site_no=422445077203301&agency_cd=USGS&referr ed_module=sw). Here, the aquifer is reported to be 17.4 feet thick (USGS Water Report 2011), presumably penetrating the full thickness of the aquifer. The reported range in the depth to the water table below the ground surface spans from a high of 3.55 feet (4-04-05) to a low of 10.84 feet (9-22-66), some 7.29 feet. The period of record extends from November 1965 to the present. Exhibit C depicts the mean daily groundwater levels from 12-10-97 to 1-25-13. It clearly shows that aquifer water levels are commonly depressed for long periods of time and, thus, that aquifer recharge is not sufficient to maintain groundwater levels throughout much of the saturated thickness of the aquifer. Using USGS well Sb-472 as a local example, the lowest mean daily water groundwater level recorded in 2012 was 10.39 feet below the ground surface on 9-28-12 (provisional data). This data shows that the water table in this sand and gravel aquifer, which is subject to similar climatic conditions as the Corning aquifer, is seasonally depressed for many months. Furthermore, only 6.6 feet of saturated aquifer thickness is present

during dry periods. Properly conducted high-discharge pumping tests, designed to assess overlapping cones of depression, are needed to assess whether continuous high water demand will dewater the aquifer. Significant water withdrawal at such times may dewater this aquifer and others with little saturated thickness. This points out the importance of determining aquifer thickness throughout the Corning aquifer as part of pumping test based aquifer safe yield determinations. Without a detailed map in hand that portrays aquifer thickness throughout the Corning aquifer, comparison cannot be made between the DEC required 180-day drawdown projection and the presence or absence of sufficient aquifer thickness needed to meet increased water demand. This is another reason why a cumulative impact analysis that includes rigorous determination of safe yield along with existing and projected future water demand must be completed prior to approval of any additional large-scale water withdrawals from the Corning aquifer.

17. It is also imperative that the cumulative impact study discussed in this affidavit address the known presence of contaminants that may adversely affect the quality of groundwater used by those tapping the Corning aquifer. As groundwater extraction rates (i.e., aquifer discharge) are increased to meet new system demands, the cone of depression expands outward away from production wells. If contaminant sources or threats are reached by pumping-induced cones of depression, inward and steepened hydraulic gradients will pull in contaminants. Thus, another critical step that must be completed as part of a cumulative impact analysis is a full assessment of contaminant threats. Such an assessment needs to include a GIS map showing all contaminant threats and a map depicting groundwater flow directions (based on field-based water well elevational data) within and adjacent to the Corning aquifer (i.e., a groundwater contour map).

18. Increased water withdrawal near known contaminant sites will outwardly expand the cones of depression and, as such, pose a real water quality risk as contaminants are drawn

into production wells. An example of a potential contaminant threat to a production well within the Corning aquifer is the former Ingersoll Rand Foundry Site in Painted Post, New York. This site is situated roughly 500 feet southwest of Painted Post municipal supply well # 4. Here, poor industrial practices resulted in soil and groundwater contamination. Figure 2-1 of the August 2005 Malcolm Pirnie, Inc. Remedial Work Plan illustrates boring and monitoring well locations. Contaminants of concern included PCBs, Linocure AW, Linoil 742, kerosene, gasoline, benzene, toluene, PAHs, diesel fuel, oil and grease, and lead and assorted metals. While extensive remedial clean-up work was conducted, the recent finding of 1,1,1-trichloroethane in Painted Post well # 4 at a concentration of 0.6 ug/l (Treichler, pers. comm.) shows that 1) this contaminant and perhaps many others remain within the Corning aquifer (as reported A) in 10-03-12 lab results, B) on 2-23-10 [0.6 ug/l], C) 8-24-04 [0.8 ug/l], 1995 [0.6 ug/l], 8-30-93 [0.6 ug/l]), and 2) there is a direct hydraulic connection through permeable unconsolidated aquifer material. Alternately, and less likely, there is another contaminant source that requires detailed groundwater investigation work, inclusive of monitoring wells and water sampling for numerous chemical parameters. Regardless of the contaminant source, 1,1,1-trichloroethane values exceed the NYS MCL of 0.5 ug/l, and requires full investigation. Until such time as much hydrogeologic testing, chemical analytical work, and assessment are completed it is not advisable to distribute and use this groundwater. Consideration should be given to discontinuing any planned withdrawals from any production well situated near the former Ingersoll Rand Foundry Site until it can be ascertained that this will not exacerbate the outward spread of the contaminant plume – possibly drawing in elevated chemical concentrations and additional contaminants. Importantly, it would be irresponsible to prematurely approve significant additional water withdrawals from production wells near contaminant sources prior to the completion of a comprehensive groundwater investigation and a cumulative impact assessment.

19. Clearly, the full breadth of potential adverse environmental impacts associated with the sale and distribution of Corning aquifer water need to be considered when evaluating the potential sale of groundwater. Any sale of Corning aquifer groundwater must be based on completion of a cumulative impact analysis.

20. The safe yield of the aquifer is not known, the cumulative quantity of water withdrawals from throughout the aquifer from all users is not known, and projected future water demand has not been rigorously assessed. Characterization of each of these factors is needed to assess current and future water availability.

21. For the reasons described above, and in my affidavit dated December 19, 2012, I am of the opinion that, before individual municipalities drawing on the Corning aquifer for their municipal water systems are permitted to engage in water exports from the aquifer, hydrogeologic testing needs to be conducted on production wells in the aquifer to determine the safe yield of the aquifer and an inter-municipal drought management plan needs to be adopted by the municipalities drawing on the aquifer so that there is agreement about how withdrawals will be restricted in a time of drought. In addition, the issues of water quality as related to large scale pumping and Groundwater Under the Direct Influence of Surface Water (GWUDI) need to be comprehensively addressed.

22. This report is based on information available to me at this time. Should additional information become available, I reserve the right to determine the impact, if any, of the new information on my opinions and conclusions and to modify or supplement this report if necessary.

I state all of the foregoing with a reasonable degree of scientific certainty.

Paul A. Rubin

Sworn to before me this 25th day of January 2013.

Sandra J. Girard
Notary Public, State of New York

SANDRA J. GIRARD
Notary Public in State of N.Y.
Ulster County 01915088549
Commission Expires Nov. 17, 2013

Exhibit List

Exhibit A - Paul Rubin Resume

Exhibit B - HydroQuest Gas Drilling Related Work

Exhibit C - USGS Mean Daily Groundwater Levels in Well Sb-472,
Steuben Co., NY

EXHIBIT A –
RESUME
(REPRODUCED HEREIN AT PP. 500-506)

EXHIBIT B – DIAGRAM OF BORING AND MONITORING WELL LOCATIONS FROM REMEDIAL WORK PLAN FOR THE FORMER INGERSOLL-RAND FOUNDRY SITE, MALCOLM PIRNIE, AUGUST 2005, FIG. 2-1

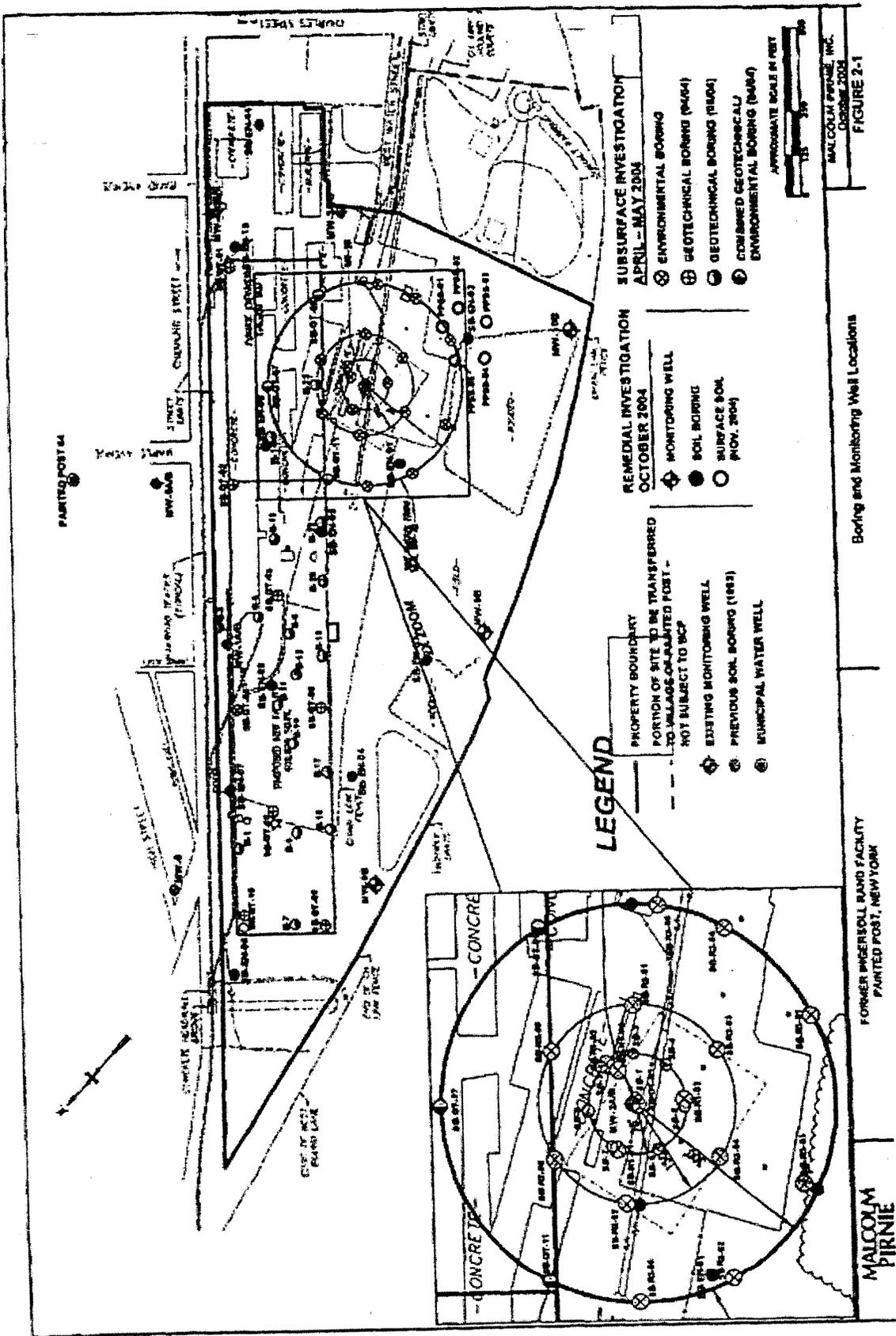
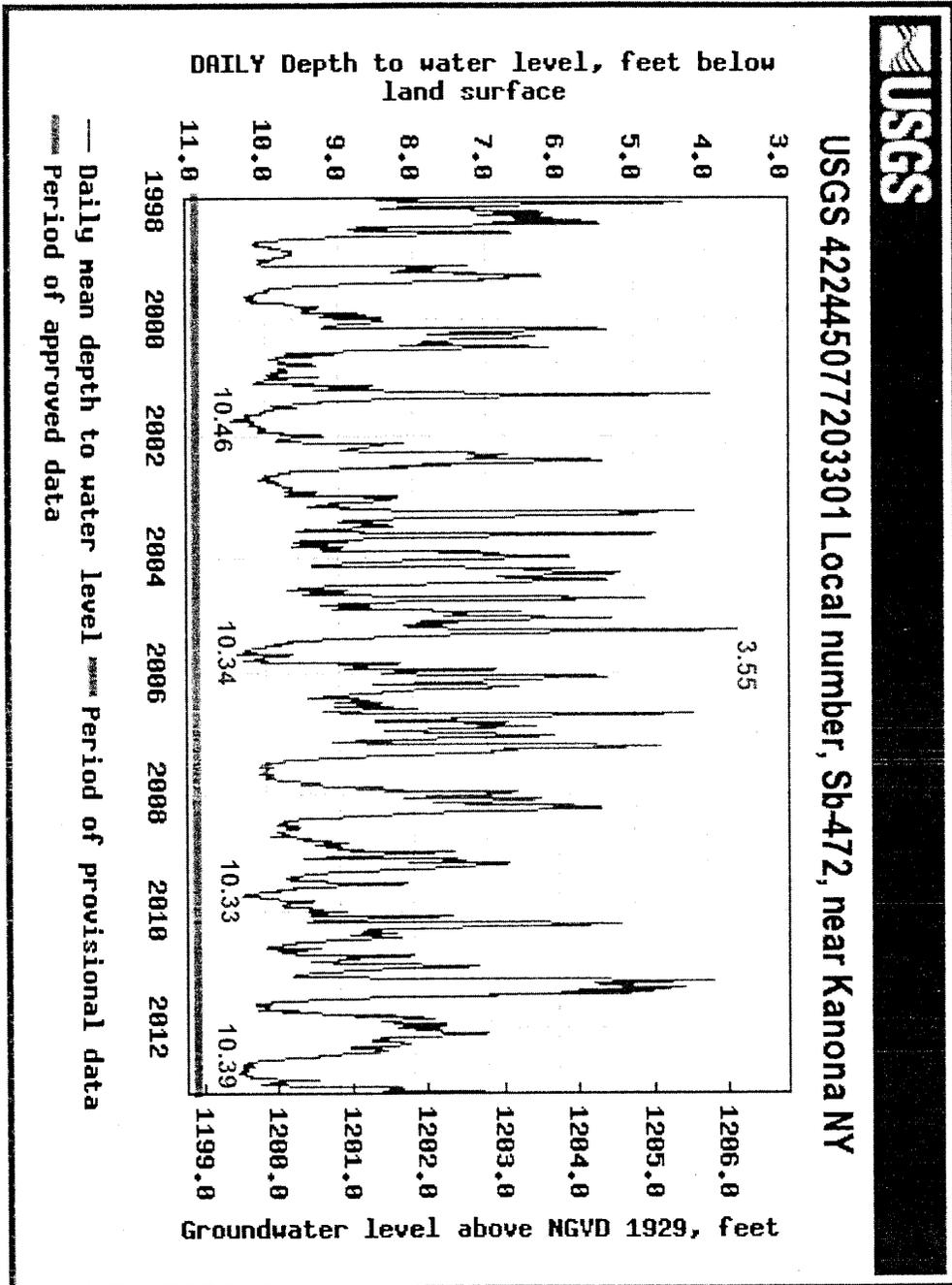


EXHIBIT C – USGS MEAN DAILY GROUNDWATER LEVELS IN WELL SB-472, STEUBEN CO., NY



**AFFIRMATION OF RACHEL TREICHLER, IN OPPOSITION TO RESPONDENTS' MOTION
TO DISMISS AND/OR FOR SUMMARY JUDGMENT, DATED JANUARY 28, 2013
[526-529]**

1966919

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIRMATION IN
OPPOSITION TO
RESPONDENTS' MOTION TO
DISMISS AND/OR FOR
SUMMARY JUDGMENT

Index No. 2012-0810CV

Justice Alex R. Renzi

I, Rachel Treichler, an attorney admitted to the practice of law before the courts of the State of New York, affirm the following to be true under the penalties of perjury pursuant to CPLR 2106:

1. I am an attorney for the petitioners in the above-captioned matter.
2. On January 22, 2013, I visited the offices of the New York State Department of Health (DOH) at 107 Broadway in Hornell, NY.
3. At the DOH office I filed a Freedom of Information request asking to review and make copies of certain documents in the DOH files regarding water quality testing and water system operation results for the municipal drinking water wells of the Village of Painted Post.
4. At the DOH office I was shown various files of documents. I was allowed to make notes regarding the documents I reviewed, but I was told that my request for copies would be sent to another office for fulfillment. I requested copies of various documents, including the documents referenced herein, and am currently waiting for a follow-up response to my request for copies.

5. Among the documents I reviewed and made notes of are the following:
- a. I reviewed, made notes of and requested a copy of a test report from Benchmark Analytics dated 3/21/12 containing eight pages of test results of Painted Post Village Well #2, denominated an “emergency well” on the test results. The test results showed no exceedances of NYS limits except manganese which was 0.69 MG/L, significantly above the NYS limit of 0.3 MG/L, as set forth in the DOH Drinking Water Regulations, Table 1. Inorganic Chemicals and Physical Characteristics, Minimum Monitoring Requirements, http://www.health.ny.gov/regulations/nycrr/title_10/part_5/subpart_5-1_tables.htm.
 - b. I reviewed, made notes of and requested a copy of a test report from Benchmark Analytics dated 10/03/12 containing several pages of test results of Village Well #4. This report showed that 1,1,1-Trichloroethane was detected in Well #4 at 0.0006 MG/L.
 - c. I reviewed, made notes of and requested a copy of a test report from NYS DOH Wadsworth Labs dated 02/23/10 containing several pages of test results of Village Well #4. This report showed that 1,1,1-Trichloroethane was detected in Well #4 at 0.6 MCG/L. 0.6 MCG/L is equivalent to 0.0006 MG/L.
 - d. I reviewed, made notes of and requested a copy of a Certificate of Analysis from Eastern Lab Services dated 08/24/04 containing several pages of test results of Village Well #4. This report showed that 1,1,1-Trichloroethane was detected in Well #4 at 0.8 MCG/L.
 - e. I reviewed, made notes of and requested a copy of the Annual Drinking Water Report of the Village of Painted Post. This report states that 1,1,1-Trichloroethane was detected in the village wells at 0.6 MCG/L in 1995.
 - f. I reviewed, made notes of and requested copies of the 2012 monthly Water System Operation Reports filed by the Village with the DOH. I made

copies of the charts of daily volumes of treated water for the months of August and September 2012, and noted the monthly totals and averages for the other months, except for June 2012 which was missing from the file. The figures from my notes are shown in Exhibit A. The figures show that the significantly larger than average volumes of water were withdrawn on certain days in August and September 2012.

6. It may be significant that the higher than usual level of TCA shown in the 10/03/2012 tests of Well #4 by Benchmark Analytics follow higher than usual levels of withdrawal from this well in August and September.

7. I have reviewed the Objections of Ingersoll-Rand Company to Village of Painted Post Condemnation of the Ingersoll-Rand Foundry Property, prepared by Phillips Lytle LLP, March 31, 2004, and the attachments thereto. (This document is posted on my website at http://treichlerlawoffice.com/pp/IRObjections_2004.pdf.) Among the attachments to these objections is the NYS DEC's Record of Decision Ingersoll Rand Foundry Inactive Hazardous Waste Site, March 1994. Attached to the record of decision are five tables showing testing results for volatile organics, including 1,1,1-Trichloroethane (TCA) in the soil and groundwater at the foundry site and one table, Table Six, showing TCA test results in Village Well #4 located adjacent to the Foundry site. These six tables are attached hereto as Exhibit B. Table Six shows that TCA was detected in the Painted Post Village Well #4 at 6 ppb on 08/30/1993. The table states that the NYS Drinking Water Standard for TCA is 5 ppb. 6 ppb is equivalent to 0.6 MCG/L.

8. Figure 2-1 from the Remedial Work Plan for the Former Ingersoll Rand Foundry Site, Malcolm-Pirnie, August 2005, shows how close Painted Post Village Well #4 is to the Foundry site. See Exhibit C. The section of the Foundry site closest to Well #4 has been converted to the rail-loading facility. The Malcolm-Pirnie Remedial Work Plan is attached as Appendix D to the Deed from Ingersoll-Rand to Painted Post Development, LLC, recorded in the Steuben County Clerk's Office, Book 1988, Page 10, Dec. 1, 2005. Both documents are posted on my website at links at <http://treichlerlawoffice.com/pp/index.html>.

9. In my research on this matter I consulted with hydrogeologist Todd Miller, who resides at 4086 Maybury Road, McGraw, NY 13101. Mr. Miller has provided me with a statement dated January 27, 2013, attached as Exhibit D, regarding his views on the need for additional studies of the impacts of increased pumping from individual groundwater wells in the Village of Painted Post to determine impacts on local water systems, and on the limitations of the groundwater flow models used in previous studies.

10. I attended the Painted Post village board meeting on September 10, 2012. At that meeting, I heard a representative of the Norfolk Southern Railroad (NS) state that the night water shipments were occurring because that was the only time NS had room on its main line to allow the water shipments to travel on the NS line from the B&H line to the WCOR line.

11. The Order to Show Cause in the above-captioned proceeding signed on June 26, 2012, by Judge Latham is attached as Exhibit E.

Dated: January 28, 2012



Rachel Treichler, Esq.
7988 Van Amburg Road
Hammondsport, NY 14840
(607) 569-2114

Attorney for the Petitioners

EXHIBIT A – FIGURES FROM NOTES [530-531]

Treated Volume of Water from Painted Post Wells #3 and #4 in 1,000/GPD

Data copied from the monthly Water System Operation Reports for the Village of Painted Post in the files of the NYS DOH in Hornell by Rachel Treichler, 01/22/13

	Sept. 2012	Aug. 2012	July 2012	June 2012	May 2012	Apr. 2012	Mar. 2012	Feb. 2012	Jan. 2012
Total	10895	10816	6978	NA	8451	6157	6625	6157	6427
Average	363	348	225	NA	281	205	213	212	207

Treated Volume of Water from Painted Post Wells #3 and #4 in 1,000/GPD

Data copied from the monthly Water System Operation Reports for the Village of Painted Post in the files of the NYS DOH in Hornell by Rachel Treichler, 01/22/13

Day	Source	TVW Sept. 2012	TVW Aug. 2012
		1,000 GPD	1,000 GPD
1	Wells 3&4	692	194
2	Wells 3&4	537	248
3	Wells 3&4	404	201
4	Wells 3&4	901	197
5	Wells 3&4	1082	189
6	Wells 3&4	883	194
7	Wells 3&4	164	209
8	Wells 3&4	364	212
9	Wells 3&4	361	215
10	Wells 3&4	395	181
11	Wells 3&4	473	170
12	Wells 3&4	200	176
13	Wells 3&4	191	266
14	Wells 3&4	188	211
15	Wells 3&4	188	976
16	Wells 3&4	192	332
17	Wells 3&4	211	439
18	Wells 3&4	252	161
19	Wells 3&4	287	176
20	Wells 3&4	147	408
21	Wells 3&4	192	921
22	Wells 3&4	160	332
23	Wells 3&4	282	332
24	Wells 3&4	141	175
25	Wells 3&4	288	835
26	Wells 3&4	140	449
27	Wells 3&4	152	462
28	Wells 3&4	287	728
29	Wells 3&4	542	517
30	Wells 3&4	599	508
31	Wells 3&4	--	202
Total		10895	10816
Average		363	348

EXHIBIT B – TABLES FROM RECORD OF DECISION INGERSOLL RAND FOUNDRY
INACTIVE HAZARDOUS WASTE SITE, MARCH 1994 [532-537]

MAR-25-2004 09:06

TABLE - 1

APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARS)
FOR CHEMICALS OF CONCERN
INGERSOLL-RAND FOUNDRY, PAINTED POST, NEW YORK
New York State SCGs

MEDIUM	REQUIREMENTS	CITATION
Groundwater	Groundwater must meet NYS Class GA groundwater standards. These standards are most stringent of: - Standards for Class GA Groundwater - NYS MCLs for Public Water Supplies - MCLs promulgated under the safe Drinking water Act	6 NYCRR Part 703 6 NYCRR Part 703.5 10 NYCRR Subpart 5-1 40 CFR Part 141 10 NYCRR Part 170
Surface water	Surface water at the site must meet NYS Ambient Water Quality Standards for Class D Water bodies.	6 NYCRR Part 701.14
Soil	- Soils at the site must meet NYS Guidance Memorandum for Soil Cleanup Objectives and Cleanup Levels - NYS Cleanup Criteria for Aquatic Sediments	NYSDEC TAGM # 4046 November 16, 1993 NYSDEC Fish & Wildlife Criteria

TABLE 2
 Volatile Organics Water Quality Data Summary
 Groundwater Quality Assessment
 Ingersoll-Rand Foundry
 Painted Post, NY

Sample I.D.	Date	1,1-Dichloro-ethane	cis-1,2-Dichloro-ethane	Chloroform	1,1,1-Trichloro-ethane	Trichloro-ethane
NY Standard (A)		5	5	7	5	5
M/W - 1A	05-May-92	ND	ND	ND	(0.2)	ND
M/W - 1B	08-May-92	ND	ND	ND	1	ND
M/W - 2A	12-May-92	ND	ND	ND	ND	ND
M/W - 2B	12-May-92	ND	1	ND	ND	(0.7)
M/W - 3A	13-May-92	ND	ND	ND	ND	ND
M/W - 3B	13-May-92	ND	ND	ND	ND	ND
M/W - 4A	13-May-92	ND	ND	ND	ND	ND
M/W - 4B	13-May-92	(0.3)	ND	ND	ND	ND
M/W - 4C	13-May-92	1	ND	ND	2	1
M/W - 5A	12-May-92	1	ND	ND	8	ND
M/W - 5B	13-May-92	ND	ND	(0.1)	(0.6)	(0.1)
M/W - 6	08-May-92	ND	ND	ND	(0.0)	ND
M/W - 7	08-May-92	1	ND	ND	2	ND

NOTES:
 Values shown in parentheses are Estimated Values where the result is less than the sample quantitation limit but greater than zero.
 (A) - New York State Department of Environmental Quality (1991)
 (1) - Applies to the sum of para and ortho isomers
 TCS - Tentatively Identified Compounds
 * - Denotes that this compound was also detected in the associated blank
 ND - Non-detectable
 All concentration units are micrograms per liter (ug/L)

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TABLE - 3

SUMMARY OF QUARTERLY MONITORING WELL SAMPLE ANALYSIS
TCA RESULTS

All concentration units are micrograms per liter (ug/l)

SAMPLE I.D.	March 1993 First Quarter	July 1993 Second Quarter	October 1993 Third Quarter	December 1993 Fourth Quarter
MW-1A	0.2	0.49	ND	ND
MW-1B	1	1.5	0.41	0.69
MW-2A	ND	ND	ND	ND
MW-2B	ND	0.30	ND	0.34
MW-3A	ND	ND	ND	ND
MW-3B	ND	0.55	ND	0.31
MW-4A	0.7	0.76	0.29	ND
MW-4B	ND	ND	ND	ND
MW-4C	2	1.3	0.50	0.45
MW-5A	7	0.83*	5.4	4.7
MW-5A DUPE	NA	6.5	5.0	NA
MW-5B	0.5	6.3*	0.20	0.27
MW-6	2	ND	ND	ND
MW-7	ND	0.73	1.3	ND
Municipal Well 4	NA	4.1	3.4	ND**
NY STANDARD	5	5	5	5

An error was made by the laboratory during the second quarter sampling event by transposing sample designator 5A and 5B. Results for MW-5A Dupe are reflective of actual ground water conditions at this location.

NA - Not Applicable, no duplicate or municipal well samples collected during these sampling events.

** - Municipal well #4 sample was collected by the Village of Painted Post, New York, Water Department on November 4, 1993.

TCA - 1,1,1-Trichloroethane

ND - Nondetectable

K-0

MAR-25-2004 09:07

TABLE 4

TABLE 1
 SUBSURFACE EVALUATION OF MW-2B, DATED FEBRUARY 9, 1993
 SEMI-VOLATILE COMPOUND RESULTS
 FORMER INGERSOLL-RAND FOUNDRY, VILLAGE OF PAINTED POST, NEW YORK

LOC:PC:Z	DEPTH	BENZ(A)		BENZ(B)		BENZ(K)		BENZ(OH)		BENZ(A)		INDENO (1,2,3-CD)		PY		
		ANTHRACENE	FLUORANTHENE	FLUORANTHENE	PERYLENE	PERYLENE	FLUORANTHENE	CHRYSENE	FLUORANTHENE	CHRYSENE	FLUORANTHENE	CHRYSENE	FLUORANTHENE	CHRYSENE	FLUORANTHENE	CHRYSENE
SB-1	0'	210	0/0	220	350	200	400	220	300	300	300	300	300	300	300	300
SB-1	3'	270(J)	500(J)	100(J)	70(J)	100(J)	770(J)	300(J)	90(J)	800	100	100	100	100	100	100
SB-2	0'	6000	13000	8700	3700	9700	6000	5700	4600	4600	4600	4600	4600	4600	4600	4600
SB-3	3'	170(J)	500(J)	140(J)	160(J)	230(J)	270(J)	100(J)	200(J)	200(J)	200(J)	200(J)	200(J)	200(J)	200(J)	200(J)
SB-3	13'	170(J)	500	2000	1000	1700	3000	2100	1700	1700	1700	1700	1700	1700	1700	1700
SB-4	3'	1700	5000	2000	1000	1700	3000	2100	1700	1700	1700	1700	1700	1700	1700	1700
SB-5	0'	7700	16000	14000	2100	10000	14000	9700	2800	2800	2800	2800	2800	2800	2800	2800
SB-4	3'	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
SB-4	7'	ND	ND	22000	4700	12000	13500	9200	6300	6300	6300	6300	6300	6300	6300	6300
SB-7	3'	6000	24000	22000	4700	12000	13500	9200	6300	6300	6300	6300	6300	6300	6300	6300
SB-7	11'	ND	ND	9100	2000	5100	5000	3600	2700	2700	2700	2700	2700	2700	2700	2700
SB-4	3'	3700	14000	9100	2000	5100	5000	3600	2700	2700	2700	2700	2700	2700	2700	2700
SB-8	0'	ND	100(J)	ND	43(J)	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND

ND - NOT DETECTED
 * - UNABLE TO COLLECT SOL SAMPLES DUE TO SUBSURFACE OBSTRUCTIONS
 ALL VALUES ARE REPORTED IN PARTS PER BILLION

(J) - Indicates an estimated value. This flag is used when reporting a concentration for a compound identified compound where a full response is assumed, or when the mass spectral data indicate the presence of a compound that is not the identification criteria but the results fall within the sample quantitation limit and greater than 100.

TABLE 3
 Volatile Organic Compounds
 Subsurface Investigation Report, Dated February 9, 1993
 Ingersoll-Rand Company, Painted Post, New York

Sample I. D.	Methylene Chloride	Acetone	Benzene	Ethyl Benzene	Other Compounds
Soil sample 1	1 (J)	IID	IID	IID	
Soil sample 2	IID	IID	IID	IID	
Soil sample 3	IID	IID	IID	IID	
Soil sample 4	2 (J)	IID	IID	IID	
Soil sample 5	IID	IID	IID	IID	
Soil sample 6	IID	IID	IID	IID	
Soil sample 7	IID	IID	IID	IID	
Soil sample 8	10 (J)	IID	IID	IID	
Soil sample 9	IID	IID	IID	IID	
Soil sample 10	2 (J)	IID	1 (J)	0.8	1 (J) 4-Methyl-2-pentanone 0.05 (J) Styrene 0.9 (J) Toluene
Soil sample 11	IID	440	IID	IID	32.0 2-Butanone
Soil sample 12	1 (J)	IID	IID	IID	6.0 (J) 2-Butanone
Drum Sample 1	4 (J)	IID	IID	IID	

J - Indicates and estimated value. This flag is used either when estimating a concentration for tentatively identified compounds where a 1:1 response is assumed, or when the mass spectral data indicate the presence of a compound that meets the identification criteria but the result is less than the sample quantitation limit but greater than zero.

MAR-25-2008 09:08

TABLE 6

VILLAGE OF PAINTED POST WELL # 4 SAMPLING RESULTS

DATE OF SAMPLE COLLECTION	TCA LEVEL in Parts per billion (ppb)	NEW YORK STATE DRINKING WATER STANDARD in ppb
3/13/91	Non-detected	5
5/15/91	2	5
7/31/91	3	5
11/27/91	Non-detected	5
3/18/92	Non-detected	5
6/17/92	Non-detected	5
9/2/92	4	5
12/16/92	1	5
3/10/93	4	5
7/29/93	3	5
8/30/93	6	5
11/4/93	Non-detected	5

TCA = 1,1,1-Trichloroethane

EXHIBIT D – LETTER FROM TODD MILLER [539-541]

Letter to Rachel Treichler from Todd Miller, Jan. 27, 2013

The glaciated northeastern United States contains many distinct aquifers composed of stratified sand and gravel deposited by glacial meltwaters. These sand-and-gravel aquifers, along with contemporaneous deposits of silt and clay that locally confine or impede groundwater flow are collectively termed "stratified drift". Most of these aquifers underlie only a few square miles, occur within bedrock valleys, and are hydraulically connected to streams.

These stratified-drift aquifers are largely independent of one another but have similar hydraulic properties, similar modes of recharge and discharge, and similar interchange of water with regional streams that flow across them. Because the groundwater in the Painted Post/Corning valley-fill aquifer system is hydraulically connected to the surface-water system, the two systems should be considered a single resource. Under natural conditions (non-pumping conditions), most groundwater in the valley-fill aquifers discharges to the main-stem streams in valleys. Groundwater discharge is a significant component of streamflow, with groundwater contributing from 60 to 70% of annual streamflow volume in central NY.

When stratified-drift aquifers are tapped by large pumping wells (municipal and industrial wells) that pumped groundwater initially comes from reductions in aquifer storage. Continued groundwater pumping reduces the amount of groundwater that flows to streams because it intercepts groundwater (captured groundwater discharge) that would have discharged into the stream and, in some cases where groundwater withdrawals are large enough, the effects of groundwater withdrawals can spread to connected streams and induce water to flow from the stream to the aquifer and flow toward the pumping well. Captured groundwater discharge to streams and induced infiltration of streamflow both result in reductions in the total amount of streamflow; as a result, the two processes are combined into the single term "streamflow depletion". Groundwater withdrawals that lead to a reduction in streamflow, can affect both human uses and ecosystems.

Streamflow reductions (or depletions) caused by pumping have become an important water-resource management issue because of the negative impacts that reduced flows can have on aquatic ecosystems, the availability of surface water, and the quality and aesthetic value of streams and rivers. It is important to understand how the vertical components of groundwater movement affect the interaction of ground water and surface water. The effects of streamflow depletion derived from large pumping wells should be evaluated before being permitted, especially in cases where the pumped water is for consumptive use (not returned the local hydrologic system), such as groundwater exported from New York aquifers and transported to Pennsylvania to be used for gas drilling using high volume hydraulic fracturing (HVHF).

In the Painted Post/Corning stratified-drift aquifer system, pumpage from several municipal and industrial well fields result in large amounts of induced infiltration from the streams. Simulating groundwater systems with computer models provide powerful tools for estimating the rates, locations, and timing of streamflow depletion in response to groundwater pumping and for evaluating alternative approaches for managing streamflow depletion. Water budgets computed from computer simulations by numerical groundwater flow models by Ballaron (1988) and later reconstructed by Leggette, Brashears & Graham, Inc. (2002) indicate that about 60% of the pumped water (from combined municipal and industrial pumpage) is derived from induced

infiltration from streams. However, the modeling reports do not indicate the amount of induced infiltration caused by individual wells, rather only the cumulative amount of induced infiltration caused by all pumping is reported.

Cumulative effects of pumping that result in consumptive loss of water from the local water system (such as water withdrawn and exported to distal areas) need to be considered. Some situations may require detailed analyses of individual stream reaches subject to depletion. This is particularly true if depletion-related changes in water chemistry or temperature are of concern or if a goal is to maintain a minimum base flow in a critical stream reach, such as for the minimum allowable flow necessary to assimilate wastewater from the downstream sewage treatment plants.

In the past, the issuing of permits by DEC for municipal wells was based on little science and did not consider stream depletion, cumulative impacts of multiple pumping centers, sustainability, or adverse impacts on the ecological health of the stream. Detailed reach-by-reach estimates of depletion can be calculated using numerical groundwater-flow models to gain insight into where pumping-induced infiltration from the stream to the aquifer might occur and how much water depletion occurs due the pumping.

Due to limitations of the SRBC/Leggette Leggette, Brashears & Graham, Inc. numerical groundwater flow models, they can only be used to provide a rough estimate on how the groundwater system works (including a crude computation of the amount of induced streambed recharge) in the Painted Post/Coming area.

Limitations of the existing SRBC/Leggette Leggette, Brashears & Graham, Inc. models include.

- 1) A too coarse grid size (500 ft x 500 ft). A finer grid size is needed (such as 100 x 100 or 200 x 200 ft cells). A finer grid size would more accurately define the cone of depressions around pumping wells and groundwater velocity vectors throughout the aquifer. These improvements would also result in more accurate particle-tracking analyses.
- 2) The models were not calibrated to flows, only to heads in the aquifer and stages in streams. Numerous gain/loss seepage measurements need to be conducted in the study area and used to calibrate the model.
- 3) As the models are currently constructed using the river package could add recharge to the aquifer even when a stream should be dry. The model should be updated the using the stream package in which actual streamflow can be assigned where streams first enters the model and gains/loses are tracked as the streams flow through the modeled area. The stream package allows the stream to go dry during simulations and therefore does not continue to provide recharge to the aquifer beyond that point. The stream package simulates the interaction between groundwater and surface water in a much more realistic manner, especially when simulating drought conditions.
- 4) The model should be extended further to the northwest in the Cohocton valley so that the area includes all of Hodgman's Creek (which was not simulated in the previous models).

Because of these limitations, the model is not constructed in sufficient detail to conduct the following important analyses

- 1) Detailed reach-by-reach estimates of stream depletion of all simulated streams in the study area
- 2) Apply the particle-tracking program to delineate the zone of groundwater contribution, including identifying the reaches of the streams that are undergoing induced infiltration.
- 3) Assess groundwater vulnerability to contamination, for example, there is a brownfield (former foundry) in the western part of Painted Post that has voc contamination.
- 4) A model of sufficient detail could be used to determine the path of these contaminated groundwaters. Do the groundwater pathlines end at municipal pumping well? How long does it take for groundwater to flow from the source of contamination to the well or stream?
- 5) A time-of-travel analysis would guide the appropriate time to sample the well to determine when the contamination could be expected to reach the well. For example, if it takes 60 days for the groundwater to flow from the source of contamination to a well, then sampling before 60 days would result in non-detection, but samples after 60 days might have positive results in detection of the contaminate.

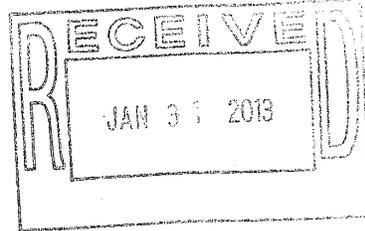
The permitted capacities of all pumping centers in central and southern NY should be inventoried and permits should be revisited because there are many municipalities such as Painted Post that have permits (some from many decades ago) to potentially withdraw large of groundwater, and that presently use much less than those maximum permitted withdrawals. When these municipal water permits were first issued, they were not intended for mostly consumptive use, rather most of the water was expected to be returned to the local water system (mostly through sewer treatment plant discharges). If many municipalities sell and export water to out-of-state entities, which results in consumptive loss of water to the local water budgets, these cumulative consumptive withdrawals might be substantial and detrimental impacts to the environment, especially during low-flow conditions.

Unfortunately, I'm not aware of an agency that has evaluated the cumulative effects of groundwater withdrawals (I'm not saying it hasn't been done, I just don't know offhand). However, I know of a perfect tool (that is in the works by USGS) but it hasn't been completed. Presently, the USGS Streamstats program enables a user to click anywhere along a stream and the program calculates estimates for high-flow conditions such 2-yr flood flow, 5-yr-flood flow, 50 yr-flood flow, etc. I believe the USGS is working on improving the program so it can also calculate an estimate of low-flow conditions such as 7Q10--the river flow that occurs once in 10 years for 7 consecutive days.

EXHIBIT E –
ORDER TO SHOW CAUSE, DATED JUNE 26, 2012
(REPRODUCED HEREIN AT PP. 41-42)

EXHIBIT F – MAP [543-544]

LIPPES & LIPPES
ATTORNEYS AT LAW
1109 Delaware Avenue
Buffalo, New York 14209-1601
Telephone: (716) 884-4800
Fax No.: (716) 884-6117



RICHARD J. LIPPES, ESQ.

January 29, 2013

RLIPPES@CONCENTRIC.NET

Honorable Alexander R. Renzi
Justice of the Supreme Court
545 Hall of Justice
Rochester, New York 14614

Re: Sierra Club, et al. v. Village of Painted Post, et al.
Index No.: 2012-0810CV

Dear Justice Renzi:

When Petitioners reviewed the Memorandum of Law and attached Affidavits served yesterday, we noted that an exhibit, which should have been attached to the Affirmation of Rachel Treichler as Exhibit "F", was inadvertently left off her Affirmation. This exhibit refers to footnote 43 on page 40 of the Memorandum of Law which references the attached map. Therefore, we would request the court's indulgence in allowing this map exhibit to be filed with Petitioners' other papers which were served yesterday. Petitioners believe that this map of the Wellsboro and Corning railroad line will help the court and the parties better visualize where the line runs.

If you have any questions, please do not hesitate to contact me. Thank you for your kind attention.

Very truly yours,

LIPPES & LIPPES

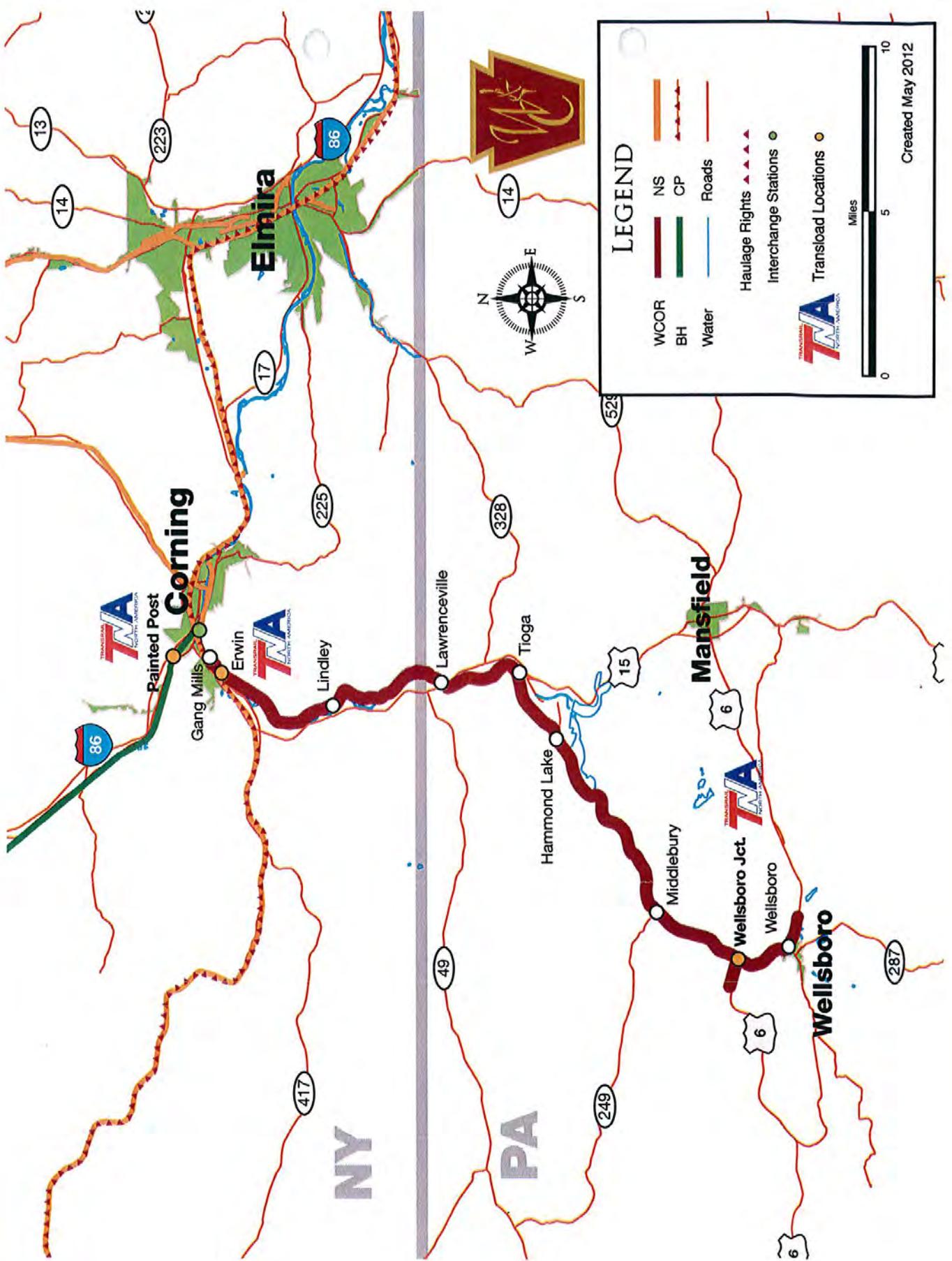
A handwritten signature in black ink, appearing to be "R. Lippes", written over the printed name.

RICHARD J. LIPPES

RJL/mtp

Enclosures

cc: Joseph D. Picciotti, Esq. (w/enclosures)
John K. Fiorilla, Esq. (w/enclosures)
Rachel Treichler, Esq. (w/enclosures)



LEGEND

WCOR	NS	CP	Roads
BH	Water	Haulage Rights	Interchange Stations
Transload Locations			

Miles 0 5 10
Created May 2012



AFFIDAVIT OF ROBERT M. DREW, IN FURTHER SUPPORT OF RESPONDENTS' MOTIONS AND IN REPLY TO PETITIONERS' OPPOSITION PAPERS, SWORN TO ON FEBRUARY 21, 2013 [545- 549]

1983423

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB; PEOPLE FOR A HEALTHY ENVIRONMENT, INC.; COALITION TO PROTECT NEW YORK; JOHN MARVIN; THERESE FINNERAN; MICHAEL FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

AFFIDAVIT IN FURTHER SUPPORT OF RESPONDENTS' MOTIONS AND IN REPLY TO OPPOSITION PAPERS SUBMITTED BY THE PETITIONERS

For a Judgment under Pursuant to Article 78 of the Civil Practice Law and Rules

-against-

2012-0810CV
Index No.: 1175-12

THE VILLAGE OF PAINTED POST; PAINTED POST DEVELOPMENT, LLC; SWEPI, LP; and the WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

Robert M. Drew, being duly sworn deposes and says:

1. As set forth in more detail in my affidavit dated August 1, 2012, I am a principal with the firm of Hunt Engineers, Architects & Land Surveyors, P.C. ("Hunt Engineers"), and I submit this affidavit in further support of Respondents' motion for summary judgment and seeking dismissal of the petition in all respects. As with my original affidavit dated August 1,st the statements in this affidavit are based upon my personal knowledge from working on the facility at issue, which I will continue to refer to as the Transloading Facility located at 350 West Water Street in the Village of Painted Post, New York (the "Village").

2. I submit this affidavit to correct inaccurate statements contained in various papers submitted by Petitioner, including and found in an affidavit dated December 19, 2012 from Mr. Paul Rubin and a second affidavit from him dated January 25, 2013.

A. Petitioners' Claims that Extensive Testing and Analysis Should Have Been Completed Concerning the Sale of Water from the Village Wells and the Development of the Transloading Facility Disregards Approvals Previously Issued for the Wells and for the Sale of Water and Disregards the Historical Production Data Available Showing the Wells Have More Than Sufficient Capacity to Provide Surplus Water

3. Mr. Rubin's two (2) affidavits claim that the Village should have completed extensive groundwater testing analysis of the aquifer from which surplus water is to be sold prior to the Village's approval of the contract for such sale and prior to the Village's approval of the construction of the Transloading Facility. Mr. Rubin's allegations are completely irrelevant to this matter, where as here the Village Wells at issue are fully permitted by the New York State Department of Environmental Conservation, and the sale of surplus water to SWEPI LP ("SWEPI"), was previously approved by the Susquehanna River Basin Commission ("SRBC"). Moreover, as set forth in detail in my previous affidavit and in the record in this matter, the New York State Department of Health specifically reviewed the Transloading Facility at issue before it was allowed to operate and it determined that the Transloading Facility met in all respects applicable requirements.

4. Mr. Rubin cites to no regulation, statute or other requirement that mandates the testing which he contends the Village was required to undertake on wells which have previously been permitted in accordance with applicable law at production capacities which exceed by a significant margin the requirements of Village residents, and such production exceeds any requirements associated with the sale of the surplus water under the contract with SWEPI. See the Affidavit of Larry Smith sworn to August 1, 2012 and the Affidavit of Larry Smith sworn to January

9, 2013 (referencing production data for the Village Wells submitted by the Village to SRBC as part of SRBC's approval of the proposed sales of surplus water). Indeed, there can be no dispute that the Village Wells previously produced water for area industries at volumes significantly exceeding the levels which are needed to meet the current requirements of Village residents and the surplus water contract.

5. Mr. Rubin also refers to guidance documents that allegedly require testing be completed on the Village Wells including a technical guidance memorandum ; however, such testing and study is not required on wells, such as those here, that have previously been permitted at specified production capacity and which production data demonstrates the rated capacity remains accurate. For example, Mr. Rubin refers to guidance issued by the New York State Department of Environmental Conservation entitled "Recommended Pumping Test Procedures for Water Supply Applications." As expected from the title of this document, this guidance was developed for production wells that are being developed or when the capacity of a well is sought to be expanded, but that is not the case here. In fact, the Village of Painted Post wells have been utilized for many decades, and no application was made to expand the capacity of such wells as part of the operation of the Transloading Facility or the sale of surplus water. Indeed, the Village wells have a long and extensive production history of over five (5) decades that demonstrates sufficient capacity to supply the requirements of the Village and supply the surplus water as proposed under the contract.

6. It should be noted that by an authoritative source cited by Mr. Rubin himself, the Village wells have demonstrated that they have more than sufficient capacity to provide water to residents and to support the sale of surplus water as contemplated by the agreement with SWEPI and as approved by the SRBC. As stated by Mr. Rubin in his affidavit at paragraph 12 "safe yield is

defined in the groundwater foundation's glossary of groundwater as: the annual amount of water that can be taken from a source of supply over a period of years without depleting that source beyond its ability to be replenished naturally in wet years." As demonstrated by the data provided by the Village of Painted Post to SRBC and referred to in Larry Smith's affidavits dated August 1, 2012 and January 9, 2013, the Village wells have demonstrated over many years that they have more than adequate capacity to exceed the requirements of Village residents as well the requirements for proposed sale of surplus water here.

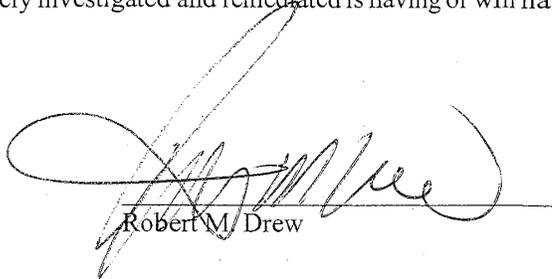
B. The November 11, 2011 Hunt Engineering Report Properly Analyzed the Capacity of the Village Well Pumps and Distribution System to Supply Surplus Water Using Accepted Hydraulic Pipe Modeling and Software Based on the Existing System Information. Further, There is No Basis for Any Claim that the Site of the Transloading Facility is Adversely Impacting Village Water Distribution System

7. Mr. Rubin is critical of the November 11, 2011 Hunt Engineering Report stating that the Hunt Report has no "hydrogeologic or scientific merit whatsoever relative to the well or Aquifer yield." Mr. Rubin apparently did not read the full Report, as it provides specific information as to the methodology utilized to develop the model to demonstrate production yields.

8. Furthermore, the November, 2011 Hunt Engineering Report was provided to the New York State Department of Health which determined that the Report provided sound basis to show that the Village's water system was more than adequate to meet the needs of Village residents sale of surplus water as contemplated in this matter. Historical data from the Village's indicated that the yield of their wells was not in question.

9. Petitioner's counsel also makes allegations that the Village water may have been adversely impacted by a portion of the site on which the Transloading Facility is located. As detailed in my previous affidavit as well as in the November 11, 2011 Hunt Engineering Report and in the Administrative Record in this matter, the site of the Transloading Facility includes the former

Ingersoll Rand Foundry property, and such property has been the subject of significant investigation, as well as remedial actions and clean up. As a result of the investigation and remediation undertaken, DEC in fact de-listed the site (which is an unusual step for DEC to take) with DEC specifically finding that "the contamination identified at the [site] has been properly remediated." Further, as detailed in my previous affidavit, there is no credible information indicating that this de-listed site which has been extensively investigated and remediated is having or will have any adverse impact on Village water.


Robert M. Drew

Sworn to before me this
21 day of February, 2013.

Darcey L. Thistle
Notary Public

DARCEY L. THISTLE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TH6157427
Qualified in Steuben County
My Commission Expires December 11, 2014

AFFIDAVIT OF LARRY E. SMITH, IN FURTHER SUPPORT OF RESPONDENTS' MOTIONS AND IN REPLY TO PETITIONERS' OPPOSITION PAPERS, SWORN TO ON FEBRUARY 21, 2013 [550-556]

1983790

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

AFFIDAVIT IN FURTHER
SUPPORT OF
RESPONDENTS' MOTIONS
AND IN REPLY TO THE
OPPOSITION PAPERS
SERVED BY PETITIONERS

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

2012-0810CV
Index No.: 1175-12

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

LARRY E. SMITH, being duly sworn deposes and says:

1. As set forth in more detail in the affidavits I have previously submitted including those dated August 1, 2012 and January 9, 2013, I am the Superintendent of Public Works for the Village of Painted Post (the "Village") and have held that position for some time. My previous affidavits further document my background including the fact that I have been a long time resident of the Village. The statements made in this affidavit are based upon my personal knowledge including my knowledge of the Village Water Supply System (the "Village System") and its capacity (the capacity of the Village Water Supply System will be referred to as the "Village System") including based upon extensive review of available information including that information

referenced in my affidavit dated January 9, 2013 and provided to Petitioners in response to their July 2012 Freedom of Information Law request.

2. This affidavit is submitted in response to numerous incorrect statements found in the affidavits submitted by Petitioners on or about January 28, 2013 including numerous affidavits.

A. There Is No Basis For Petitioners' Claims that there was no reliable Data Supporting the Approvals The Village Issued, to the contrary, the Record Shows There Was Substantial Well Production Data From Decades of Production from the Village Wells, and the Village Further Relied Upon The Approvals Previously Issued by the Agencies At Issue including but not limited to the Susquehanna River Basin Commission (which included a review by the New York State Department of Environmental Conservation) and The New York State Department of Health

3. Petitioners submitted several affidavits from persons referring to themselves as geologists or hydrogeologists and others which claim that the Village failed to identify and analyze appropriate data when it made its determination to approve the development of the Transloading Facility and when it decided to sell certain surplus water to SWEPI, LP (the "Surplus Agreement"). In fact the affidavit from Mr. Rubin claims that the Village had no basis for making these determinations. This is simply not true and the facts are clear and contradict Petitioners' claims.

4. As detailed in my previous affidavits and in the documents previously provided, the Village (as well as the Susquehanna River Basin Commission) relied on, among other information, decades of production data showing the Village Water System has more than adequate capacity to meet the demands associated with the Village residents as well as that to be provided pursuant to the Surplus Agreement. See the Affidavits of Larry Smith dated August 1, 2012, and dated January 9, 2013 together with the documents provided to the Petitioners in response to their July Freedom of Information Law Request (an extra copy of my January 9, 2013 Affidavit and the documents referenced in it are attached as Exhibit "A"). The production data referenced which I reviewed and which was provided to the SRBC as part of its review of the water withdrawal applications documents well production data which dates back to the 1950's and shows there is more than

adequate capacity to provide water to Village residents and also supply surplus water under the Surplus Agreement.

5. To put this in perspective, the Village Wells have an authorized production capacity of over 4 millions of gallons of per day; in 2012 the average daily use of water for Village residents and other Village Water System users (not taking into account surplus water sold to SWEPI beginning in late August), was 230,000 gallons per day. As a result, even if SWEPI were to purchase the maximum amount of surplus water as authorized by SRBC and under the contract, the daily rate of use would be less than one third of the authorized capacity of such wells.

6. Moreover, the Village reasonably relied on the determinations previously issued by the New York State Department of Environmental Conservation ("DEC") for the issuance of the permits associated with the Village wells, as well as the SRBC's authorizations for the withdrawal of surplus water here, in addition the New York State Department of Health ("DOH") in approving and authorizing the development of the Transloading Facility as well as authorizing the sale of water under the Surplus Agreement.

B. Petitioners' Affidavits Contain Statements which are Contradicted by the Facts

7. There are numerous statements made by Petitioners in the affidavits submitted which are simply not supported by any facts. For example, Petitioners speculate that the sale of water under the Surplus Agreement was temporarily terminated due to the fact that water in the Village Wells was low is completely false. I have specific personal knowledge of the water withdrawals that are undertaken and also monitor through a pump station for the Transloading Facility the amounts of water withdrawn. At no time ever in my tenure as the Superintendent of Public Works, including in this past fall has there been any indication that the Village Wells were in danger of becoming depleted. In my capacity as the Superintendent of Public Works, I am charged with reviewing

production data associated with the Village wells, including test results provided on an a monthly basis and at no time has there been any indication that the production capacities of the Village Wells were limited or any indication that such wells were becoming depleted.

8. The Village did provide SWEPI with over 10 million gallons of water this past fall, and whenever SWEPI called, we were ready to deliver the water. We remain ready, willing and able to do so, and will meet whatever demands SWEPI might have in that regard under the terms of the Surplus Agreement.

9. The affidavit of Mr. John Marvin also makes numerous statements which are contradicted by the facts. For example, he references in Paragraph 11 that certain facilities were replaced as part of the Transloading Project and specifically talks about how a pump and pipe was replaced which included replacing a larger pipe with a smaller one. In fact, the replacement that Mr. Marvin references was an in kind replacement because the pump at issue was worn out; these are the kinds of maintenance items that the Village Water Department undertakes on a routine basis to maintain the Village Water System. Similarly, Mr. Marvin in paragraph 12 of his affidavit speculates that certain pump testing was undertaken by the Village in the spring of 2012 to remove certain contaminants from a Village well. Again, this is not true; rather, as referenced in my affidavit of January 9, 2013, the Village undertook routine maintenance testing associated with the back up well, there was no testing undertaken to "remove contaminants" as Mr. Marvin claims. Mr. Marvin also mistakenly references certain work that was undertaken on Hemley Lane. In fact, the work undertaken was for a sanitary sewer and storm sewer improvement not related to the Village's water production or distribution system.

10. In addition, Mr. Marvin and others claim that they have undertaken testing to determine whether there are high levels of so-called total dissolved solids (TDS) which are defined

as minerals found in water drawn from wells such as the Village wells here. First, as more specifically addressed in the affidavit of Mr. Gough, there is no way to determine whether the TDS sampling which Petitioners claim was completed was done in a manner that would demonstrate the results were reliable. For example, no chain of custody documentation was provided by Petitioners to indicate whether the samples were collected and analyzed so that the potential for contamination by other sources could be eliminated. In any event, even if such information were provided, the results would be worthless, as without any baseline testing, that is testing occurring in a controlled setting from previous years under the same conditions establishing a base line for TDS's in water shown to be drawn from the Village wells and not impacted by other factors such as Petitioners own pipes and system etc., any claim that there are additional sediments in the Water System water is worthless and no such baseline has been provided.

11. Further, the Village Water has been known for years as being "hard," but that has no impact on the ability to drink the water as the New York State Department of Health does not require tests for many of the minerals and other substances which makes water hard.

C. The Department of Health Has Stringent Requirements For The Testing Of Water Which The Village Adheres To, And Any Claims Made That the Village Water Has Been Adversely Impacted by the Sale of Surplus Water Are Without Basis

12. Pursuant to extensive DOH regulations, the Village Public Works Department undertakes significant testing of the Village Water System on a monthly basis for certain criteria and on an annual basis and beyond for other criteria. On an annual basis, the Village produces a report on the Village Water System. That annual report requires the Village to identify whether any exceedances or violations have been noted. See Exhibit "A" attached hereto, copies of documents provided to Petitioners in response to their July 2012 FOIL request, including copies of the Village of Painted Post's previous annual water reports. In my six (6) years as Superintendent of the Village Water Department there have been no such violations.

13. Petitioner's counsel in her affidavit at paragraph 5 appears to reference such annual reports or the data provided in them from a visit she made to a health department office and she makes a number of statements which are not supported by the facts. A brief review of her affidavit and the annual reports made available shows there is no basis for the conclusions she attempts to draw.

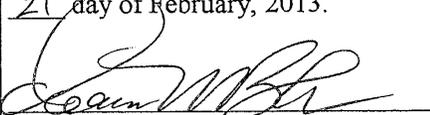
14. For example, in paragraph 6 of her affidavit she states: "it may be significant that the higher than usual level of TCA shown in the 10/03/2012 Tests of Well No. 4 by Benchmark Analytics follow higher than usual levels of withdrawal from this Well in August and September." This statement is mystifying, because as set forth in her affidavit at paragraph 5 under subparts b, c and d, the affiant herself points out that prior to 2012, the levels of TCA were higher (although still an order of magnitude below drinking water standards) than in more recent testing; in short it appears that the miniscule levels of TCA are dropping. As such, her statement that TCA levels were higher in September and August is contradicted by her own statements and by the annual reports provided by the Village for previous years.

15. In fact, even a brief review of the production data shows that as recently as 1995 the Village pumped more than 20 million gallons per month during the same time period (August-September) with no adverse impacts noted. Further, while some of the volume of water Petitioners noted was produced in the fall of 2012 would be attributed to the sale of surplus water, the historic withdrawal data provided to Petitioners shows that in 2008 in August and September some 10 million gallons in each month was withdrawn and there is no indication that such withdrawals resulted in higher levels of TCA in Village Water. In any event, the Department of Health standard for the TCA in drinking water is 5 ppb and the highest levels that have ever been found far below drinking water standards.

16. Petitioners' counsel also references that investigation at the Ingersoll Rand site found levels of TCA. What she fails to acknowledge is that the New York State Department of Environmental Conservation (DEC) specifically found that after significant investigation and remediation, the contamination of the site had been remediated. See Administrative Record at Exhibit 9 (including the November 2011 Hunt Report documenting DEC's findings at the former IR Foundry site). In any event, there is simply no information in the record which indicates that any minute amounts of TCA in Village Wells, far below the drinking water standard, had any connection to the former Ingersoll Rand property.


LARRY B. SMITH

Sworn to before me this
21 day of February, 2013.


Notary Public

DEANNA M. BAKER
Notary Public, State of New York
Qualified in Steuben County
No. 01BA4954870
My Commission Expires Aug. 21, 20 13

EXHIBIT A – AFFIDAVIT OF LARRY E. SMITH, SUBMITTED AT THE REQUEST OF JUDGE RENZI CONCERNING DISCOVERY ISSUES, SWORN TO JANUARY 9, 2013 [557-559]

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

AFFIDAVIT SUBMITTED AT
THE REQUEST OF JUDGE
RENZI CONCERNING
DISCOVERY ISSUES

Petitioners,

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

Index No.: 2012-0810

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

LARRY E. SMITH, being duly sworn deposes and says:

1. I am the Superintendent of Public Works for the Village of Painted Post (the "Village") and I submit this affidavit at the request of Judge Renzi in this matter. I am informed by counsel for the Village that the Court has directed that I identify the documents or records that were used from the Village files in preparation of my affidavit sworn to August 1, 2012. In summary (and as set forth more fully in my previous affidavit), my August 1, 2012 Affidavit submitted in this matter was based on my experience as Superintendent of Public Works, my review of the pleadings in this matter, including the Petition and documents referenced in it, the Administrative Record previously certified, as well as documents referenced as certain Village records. The Court has directed that I identify the Village records I used to prepare my affidavit, as the other documents

(pleadings and documents referenced in them, the Administrative Record etc.) are already available to all of the parties.

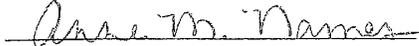
2. As regards to Village records, paragraph 11 of my August 1st, 2012 Affidavit references certain Village records which I reviewed in preparing it. The Village records I reviewed were among those the Village provided to the Sierra Club pursuant to the Freedom of Information Law Request dated June 6, 2012 ("the Sierra Club June FOIL") to which the Village originally responded on June 22, 2012 and concerning which the Sierra Club contacted the Village to review for the first time in December, 2012. I have reviewed the documents provided by the Village in response to the Sierra Club June FOIL, and I did not review any other Village records or Village documents to prepare my August 1st, 2012 affidavit other than those contained in the response provided by the Village in response to the referenced FOIL. The documents provided in response to the June Sierra Club FOIL reflect among other matters, historic information concerning withdrawal of water from the Village wells which was summarized in such documents by the Department of Public Works several years ago.

3. In addition, I am told by counsel for the Village that a question was raised regarding whether "pumping tests" were performed on Village wells as part of the Village's proposed agreement to provide water to SWEPI LP ("SWEPI") in this matter. Specifically, an allegation has been made that the Village undertook tests of the wells to be used to provide surplus water to SWEPI in March of 2012 in order to determine whether same could provide certain volumes of water. As set forth in substantial detail in the Village's papers dated August 1, 2012, Village wells No. 3 and 4 are the primary production wells for the Village and those wells will be used to supply surplus water pursuant to the contract at SWEPI. No specific testing was undertaken of Village wells Nos. 3 and 4 associated with the effort in constructing the Transloading Facility other than the modeling study

completed by Hunt Engineering as documented in the Village's papers provided as part of the Administrative Record in this matter. In or about the Spring of 2012, the Village did have the opportunity to perform some routine maintenance on Village well No. 2, which serves as an emergency backup well. As part of the routine maintenance performed during the Spring of 2012, the Village did extract water from Village well No. 2 over a short time period to ensure that same could be reliably used as backup in case of emergency should there be an issue with Wells Nos. 3 and 4.


LARRY E. SMITH

Sworn to before me this
9 day of January, 2013.


Notary Public

ANNE M. NAMES
NOTARY PUBLIC-STATE OF NEW YORK
No. 01NA6217473
Qualified in Steuben County
My Commission Expires February 08, 2014

EXHIBIT – JANUARY 9, 2013 AFF PRODUCTION DATA [560-598]

Joseph D. Picciotti

From: Joseph D. Picciotti
Sent: Thursday, January 03, 2013 5:44 PM
To: Rachel Treichler (treichlerlaw@frontiernet.net)
Cc: Richard Lippes; John K. Fiorilla
Subject: Response to Sierra Club FOIL Request
Attachments: tmp.pdf; HBROC-#1952148-v1-anne_names_cover_to_foil_response.PDF

As a courtesy, we enclose copies of the cover letter and documents provided to your client today in response to the Sierra Club's FOIL request dated June 6, 2012 ("the June FOIL"). As you know, the Village Clerk had responded to the June FOIL by correspondence dated June 22, 2012 notifying the Sierra Club representative filing the FOIL that documents had been identified in response to it, and that they and could be copied upon authorization from such representative and advancement to the Village of the cost of copying. As you know, in the last week the Sierra Club for the first time responded to the Village's June 22, 2012 correspondence indicating its interest in reviewing the documents and obtaining copies of them. Today, a Sierra Club representative presented herself at the Village Clerk's Office and received copies of the documents requested after advancing to the Village the cost for copying same.

Joseph D. Picciotti
Partner

HARRIS BEACH PLLC

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practiceGREEN
Save a tree. Read, don't print, emails.

Descriptions	January	February	March	April	May	June	July	August	September	October	November	December	Monthly Ave	Descriptions	Ave Daily	Peak Daily
Well # 2														Well # 2		
Well # 3 & 4	17,663,000	16,535,000	16,302,000	17,179,000	17,254,000	17,925,000	19,645,000	18,926,000	16,149,000	16,789,000	15,581,000	15,920,000	17,321,500	Well # 3 & 4	570,099	994,000
Well # 2														Well # 2		
Well # 3 & 4	17,663,000	16,535,000	18,302,000	17,179,000	17,254,000	17,925,000	19,645,000	18,926,000	16,149,000	16,789,000	15,581,000	15,920,000	17,321,500	Well # 3 & 4	571,512	1,673,000
Well # 2														Well # 2		
Well # 3 & 4	11,873,000	10,468,000	11,881,000	11,787,000	12,824,000		14,107,000	13,779,000	10,165,000	9,904,000	9,405,000	9,384,000	11,398,818	Well # 3 & 4	343,526	647,000
Well # 2														Well # 2		
Well # 3 & 4	9,982,000	11,784,000	14,819,000	15,096,000	15,660,000	276,000	11,504,000	10,156,000	8,780,000	9,183,000	8,459,000	8,938,000	11,361,000	Well # 3 & 4	376,468	779,000
Well # 2														Well # 2		
Well # 3 & 4	270,000						18,895,000	15,725,000	14,461,000	13,897,000	11,065,000	10,804,000	13,566,333	Well # 3 & 4	446,756	761,000
Well # 2														Well # 2		
Well # 3 & 4	11,175,000	9,468,000	11,574,000	10,447,000	11,721,000	11,917,000	12,276,000	12,840,000	11,242,000	11,456,000	11,134,000	11,814,000	11,421,750	Well # 3 & 4	375,510	919,000
Well # 2														Well # 2		
Well # 3 & 4	11,672,000	10,368,000	11,861,000	11,331,000	12,524,000	12,341,000	14,577,000	14,692,000	13,975,000	14,867,000	14,375,000	14,998,000	13,115,083	Well # 3 & 4	431,181	921,000
Well # 2														Well # 2		
Well # 3 & 4	15,963,000	15,627,000	15,927,000	11,053,000	9,602,000	9,269,000	9,534,000	9,169,000	9,465,000	9,482,000	8,620,000	9,150,000	11,071,750	Well # 3 & 4	364,003	758,000
Well # 2														Well # 2		
Well # 3 & 4	9,420,000	8,947,000	9,457,000	9,929,000	9,812,000	8,785,000	10,144,000	9,669,000	8,324,000	8,778,000	8,002,000	9,622,000	9,324,083	Well # 3 & 4	306,545	432,000
Well # 2														Well # 2		
Well # 3 & 4	11,257,000	10,036,000	9,484,000	9,279,000	10,511,000	10,098,000	9,493,000	8,894,000	8,020,000	8,422,000	6,974,000	7,097,000	9,123,583	Well # 3 & 4	299,953	471,000
Well # 2														Well # 2		
Well # 3 & 4	8,273,800	7,317,300	8,034,000	7,918,123	8,007,309	7,536,264	7,785,562	7,841,129	8,176,690	10,745,498	9,472,844	10,175,868	8,448,683	Well # 3 & 4	277,765	619,182
Well # 2														Well # 2		
Well # 3 & 4	11,094,157	9,917,100	8,955,696	7,451,288	8,346,168	8,868,300	8,983,769	7,865,078	6,319,998	6,191,365	6,066,985	5,641,360	7,925,105	Well # 3 & 4	260,551	
Well # 2														Well # 2		
Well # 3 & 4	6,441,495	6,169,128	6,639,103	6,167,484	8,736,696									Well # 3 & 4	93,581	

Well # 3 & 4 run together

* Year references added by counsel
due to GP7 quality

2000

2001

2002

2003

2004

2005

2006

2007

2008

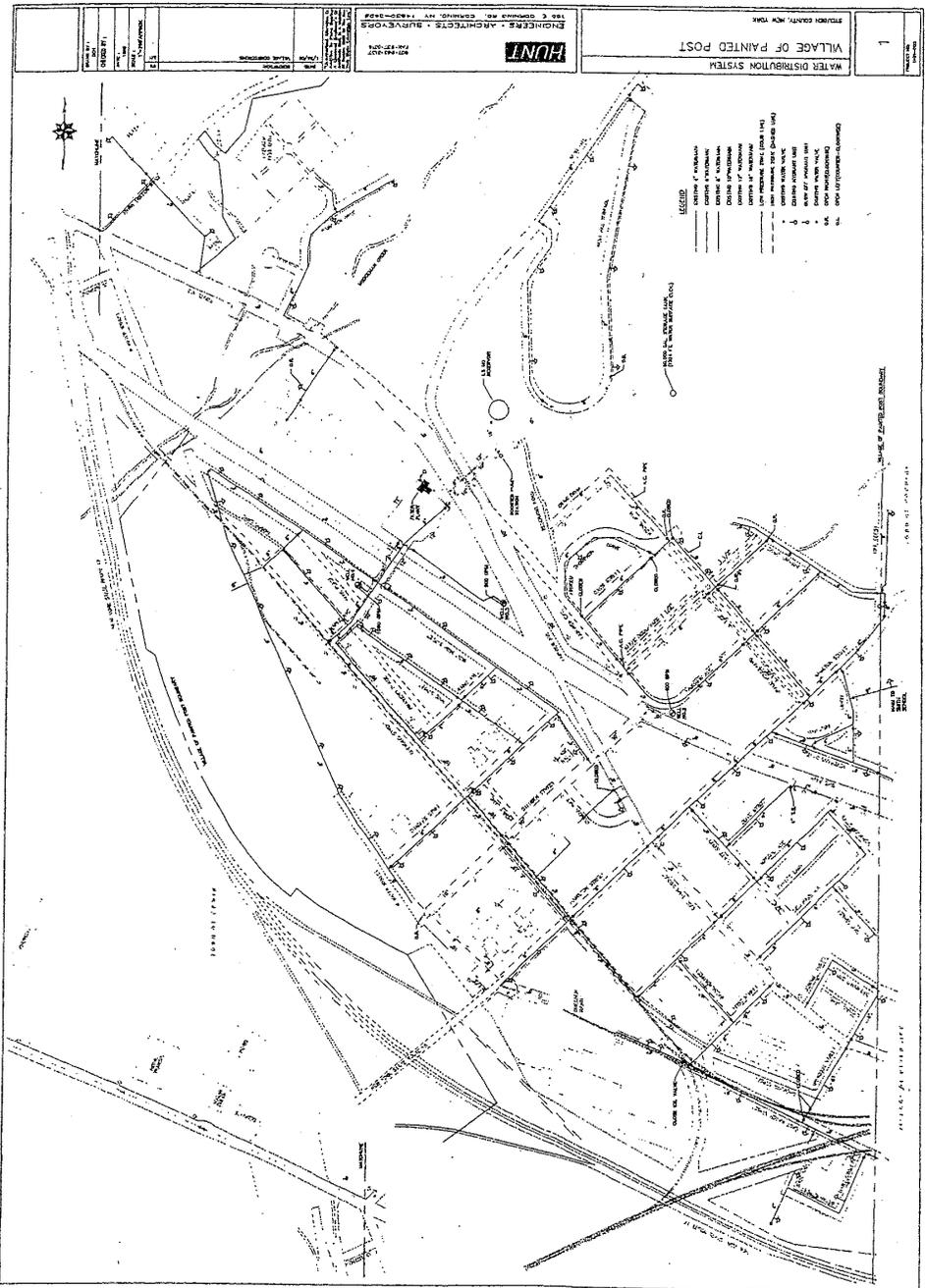
2009

2010

2011

2012 *

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Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	536,000	Well # 2		
Well # 3 & 4	19,869,000	18,228,000	19,404,000	20,412,000	20,682,000	18,954,000	19,404,000	19,908,000	19,236,000	19,740,000	17,406,000	15,312,000	19,006,000	Well # 3 & 4	644,121	2,232,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	15,372,000	14,364,000	15,204,000	14,700,000	16,632,000	17,808,000	17,040,000	17,862,000	16,682,000	16,684,000	12,432,000	13,860,000	15,720,833	Well # 3 & 4	534,208	924,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	15,988,000	15,006,000	15,220,000	17,878,000	20,664,000	20,901,000	22,176,000	24,262,000	17,472,000	14,196,000	12,700,000	13,438,000	17,449,917	Well # 3 & 4	592,633	1,008,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	16,460,000	23,100,000	17,892,000	13,944,000	15,960,000	16,968,000	18,972,000	19,320,000	18,144,000	17,052,000	17,556,000	19,488,000	17,904,667	Well # 3 & 4	606,005	1,248,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	534,857	Well # 2		
Well # 3 & 4	20,580,000	18,312,000	20,580,000	19,892,000	23,856,000	24,528,000	24,612,000	21,922,000	19,488,000	18,984,000	17,976,000	17,220,000	20,670,833	Well # 3 & 4	689,847	1,092,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	17,976,000	17,640,000	19,404,000	19,740,000	21,336,000	15,834,000	8,640,000	22,426,000	22,536,000	22,092,000	21,878,000	23,436,000	19,395,000	Well # 3 & 4	698,466	1,332,000
Well # 2	672,000	912,000	2,112,000			576,000	480,000						950,400	Well # 2		
Well # 3 & 4	23,436,000	21,924,000	22,412,000	20,376,000	21,420,000	20,412,000	19,680,000	19,152,000	17,388,000	17,554,000	16,716,000	17,196,000	19,800,500	Well # 3 & 4	663,995	1,212,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	944,000	Well # 2		
Well # 3 & 4	16,464,000	15,372,000	15,540,000	15,792,000	17,556,000	17,862,000	20,076,000	20,076,000	19,572,000	21,408,000	15,540,000	15,120,000	17,534,000	Well # 3 & 4	581,633	1,260,000
Well # 2	144,000	576,000									4,416,000	218,000	1,338,500	Well # 2		
Well # 3 & 4	19,740,000	25,512,000	18,312,000	16,800,000	18,144,000	16,894,000	14,716,000	16,548,000	17,724,000	19,824,000	18,192,000	22,848,000	18,770,333	Well # 3 & 4	631,775	1,344,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	17,556,000	15,824,000	18,312,000	18,480,000	20,076,000	21,924,000	22,260,000	22,176,000	21,420,000	21,420,000	19,236,000	18,490,000	19,747,000	Well # 3 & 4	656,252	1,332,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	720,000	Well # 2		
Well # 3 & 4	19,572,000	19,236,000	19,572,000	19,824,000	20,832,000	21,672,000	22,344,000	21,924,000	18,404,000	19,320,000	17,136,000	17,640,000	19,873,000	Well # 3 & 4	655,332	756,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	17,976,000	16,296,000	18,228,000	17,640,000	12,480,000	14,376,000	13,860,000	13,500,000	13,500,000	15,180,000	13,220,000	13,560,000	14,984,667	Well # 3 & 4	492,647	756,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	13,140,000	11,820,000	13,012,000	13,801,000	16,048,000	15,758,000	16,427,000	17,282,000	16,051,000	16,926,000	16,045,000	16,805,000	15,242,917	Well # 3 & 4	501,137	778,000
Well # 2	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	576,000	Well # 2		
Well # 3 & 4	16,988,000	15,594,000	16,983,000	16,859,000	18,898,000	18,851,000	18,817,000	18,863,000	18,026,000	17,658,000	16,871,000	17,521,000	17,645,833	Well # 3 & 4	580,137	859,000



*Annual Drinking Water Quality Report for 2011
Village of Painted Post
261 Steuben Street
Painted Post, NY 14870
(Public Water Supply ID# NY5001222)*

INTRODUCTION

To comply with State regulations, Village of Painted Post, will be annually issuing a report describing the quality of your drinking water. The purpose of this report is to raise your understanding of drinking water and awareness of the need to protect our drinking water sources. Last year, your tap water met all State drinking water health standards. We are proud to report that our system did not violate a maximum contaminant level or any other water quality standard. This report provides an overview of last year's water quality. Included are details about where your water comes from, what it contains, and how it compares to State standards.

If you have any questions about this report or concerning your drinking water, please contact Larry E. Smith, Superintendent of Public Works at (607) 962-8724. We want you to be informed about your drinking water. If you want to learn more, please attend any of our regularly scheduled village board meetings. The meetings are held on the second Monday of each month at 7:00 PM at the Village Hall on the corner of Steuben Street and West High Street.

WHERE DOES OUR WATER COME FROM?

In general, the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants. In order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDA's regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

Our water system serves approximately 1842 people through approximately 769 service connections. In addition, our water system provides potable water to the Village of Riverside and portions of the Town of Corning. Our water source is from three groundwater wells located at Craig Park, Maple Avenue near W. High Street and Fairview Avenue near Fairview Avenue Extension. The wells vary from approximately 78 feet deep to 100 feet deep. The water is conveyed to the water treatment plant in Craig Park where it is chlorinated for disinfection purposes, fluoridated for dental health purposes, and phosphate added for corrosion control prior to distribution.

Our Source Water Assessment Summary is not available from the NYS Department of Health at this time.

ARE THERE CONTAMINANTS IN OUR DRINKING WATER?

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, total trihalomethanes, haloacetic acids, radiological and synthetic organic compounds. The table presented below depicts which compounds were detected in your drinking water. The State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently. Some of our data, though representative, are more than one year old.

It should be noted that all drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the New York State Health Department district office in Hornell at (607) 324-8371.

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, turbidity, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, total trihalomethanes, and synthetic organic compounds. None of the compounds we analyzed for were detected in your drinking water.

Table of Detected Contaminants							
Contaminant	Violation Yes/No	Date of Sample	Level Detected (Avg/Max) (Range)	Unit Measurement	MCLG	Regulatory Limit (MCL, TT or AL)	Likely Source of Contamination
INORGANIC CONTAMINANTS							
LEAD	N	6/13/09	<.5 - 1.5 90 th percentile ¹ = 1.3	ug/l	15	AL = 15	Corrosion of household plumbing; Erosion of natural deposits
COPPER	N	6/13/09	<0.06 - 1.16 90 th percentile ² = 1.07	mg/l	1.3	AL = 1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives
BARIUM	N	2/22/10	0.43	mg/l	2	2	Discharge of drilling wastes; discharge from metal refineries; Erosion of natural deposits
NITRATE Well # 2 Well # 3 Well # 4	N	10/26/06 9/14/11 9/14/11	.87 ≤ 0.37 ≤ 0.05	mg/l	10	10	Runoff from fertilizer use; Leaching from septic tanks; Sewage; Erosion of natural deposits
Fluoride	N	Monthly	.61 to 1.20	mg/l	NA	2.2	Water additive to promote strong teeth

VOLATILE ORGANIC CONTAMINANTS							
Total Trihalomethanes [TTHMS]							
[chloroform, bromodichloromethane, dibromochloromethane and bromoform]	N	8/17/10 2/2/10	7.63 MRT 4.7 entry point	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
1,1,1 Trichloroethane	N	2/22/10	0.6	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
HALOACETIC ACIDS [HAA5s]							
[mono-,di and trichloroacetic acid, and mono-and dibromoacetic acid]	N	8/17/10	ND	ug/l	60	60	By-product of drinking water chlorination.
RADIOLOGICAL							
Well No. 3 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.23/3.3 .47/3.1	pCi/L	0	5	Erosion of Natural Deposits
Well No. 4 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.29/2.6 .36/.28	pCi/L	0	5	Erosion of Natural Deposits
Well No. 3 & 4 Combined Radium 226/228 Radium 228	N	3/19/08 5/22/08	.23/1.39 -.22	pCi/L	0	5	Erosion of Natural Deposits

1 - The level presented represents the 90th percentile of the 10 sites tested. A percentile is a value on a scale of 100 that indicates the percent of a distribution that is equal to or below it. The 90th percentile is equal to or greater than 90% of the lead values detected at your water system. In this case, 10 samples were collected at your water system and the 90th percentile value was the 1.30 ug/l value. The highest value was 1.5 ug/l. The action level for lead was not exceeded at any of the sites tested.

2 - The level presented represents the 90th percentile of the 10 samples collected. The 90th percentile value was the 1.07 mg/l value. The highest value was 1.16 mg/l. The action level for copper was reached at one of the sites tested.

Definitions:

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Maximum Residual Disinfectant Level (MRDL): The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

Maximum Residual Disinfectant Level Goal (MRDLG): The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contamination.

Maximum Residual Time (MRT): Water that has been in the distribution system the longest period of time.

Action Level (AL): The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

Treatment Technique (TT): A required process intended to reduce the level of a contaminant in drinking water.

Non-Detects (ND): Laboratory analysis indicates that the constituent is not present.

Nephelometric Turbidity Unit (NTU): A measure of the clarity of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

Milligrams per liter (mg/l): Corresponds to one part of liquid in one million parts of liquid (parts per million - ppm).

Micrograms per liter (ug/l): Corresponds to one part of liquid in one billion parts of liquid (parts per billion - ppb).

Nanograms per liter (ng/l): Corresponds to one part of liquid to one trillion parts of liquid (parts per trillion - ppt).

Picograms per liter (pg/l): Corresponds to one part per of liquid to one quadrillion parts of liquid (parts per quadrillion - ppq).

Picocuries per liter (pCi/L): A measure of the radioactivity in water.

Millirems per year (mrem/yr): A measure of radiation absorbed by the body.

Million Fibers per Liter (MFL): A measure of the presence of asbestos fibers that are longer than 10 micrometers.

WHAT DOES THIS INFORMATION MEAN?

As you can see by the table, our system had no violations. We have learned through our testing that some contaminants have been detected; however, these contaminants were detected below the level allowed by the State.

If present, elevated levels of lead can cause serious health problems, especially for pregnant women, infants, and young children. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. Village of Painted Post is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>.

DO I NEED TO TAKE SPECIAL PRECAUTIONS?

Although our drinking water met or exceeded state and federal regulations, some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by *Cryptosporidium*, *Giardia* and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

INFORMATION ON FLUORIDE ADDITION

Our system is one of the many drinking water systems in New York State that provides drinking water with a controlled, low level of fluoride for consumer dental health protection. According to the United States Centers for Disease Control, fluoride is very effective in preventing cavities when present in drinking water at an optimal range from 0.7 to 1.2 mg/l (parts per million). To ensure that the fluoride supplement in your water provides optimal dental protection, the State Department of Health requires that the Village of Painted Post monitor fluoride levels on a daily basis. Last year monitoring showed fluoride levels in your water were in the optimal range 89% of the time. None of the monitoring results showed fluoride at levels that approach the 2.2 mg/l MCL for fluoride.

WHY SAVE WATER AND HOW TO AVOID WASTING IT?

Although our system has an adequate amount of water to meet present and future demands, there are a number of reasons why it is important to conserve water:

- ◆ Saving water saves energy and some of the costs associated with both of these necessities of life;
- ◆ Saving water reduces the cost of energy required to pump water and the need to construct costly new wells, pumping systems and water towers; and
- ◆ Saving water lessens the strain on the water system during a dry spell or drought, helping to avoid severe water use restrictions so that essential fire fighting needs are met.

You can play a role in conserving water by becoming conscious of the amount of water your household is using, and by looking for ways to use less whenever you can. It is not hard to conserve water. Conservation tips include:

- ◆ Automatic dishwashers use 15 gallons for every cycle, regardless of how many dishes are loaded. So get a run for your money and load it to capacity.
- ◆ Turn off the tap when brushing your teeth.
- ◆ Check every faucet in your home for leaks. Just a slow drip can waste 15 to 20 gallons a day. Fix it and you can save almost 6,000 gallons per year.
- ◆ Check your toilets for leaks by putting a few drops of food coloring in the tank, watch for a few minutes to see if the color shows up in the bowl. It is not uncommon to lose up to 100 gallons a day from one of these otherwise invisible toilet leaks. Fix it and you save more than 30,000 gallons a year.

CLOSING

Thank you for allowing us to continue to provide your family with quality drinking water this year. In order to maintain a safe and dependable water supply we sometimes need to make improvements that will benefit all of our customers. The costs of these improvements may be reflected in the rate structure. Rate adjustments may be necessary in order to address these improvements. We ask that all our customers help us protect our water sources, which are the heart of our community. Please call our office if you have questions.

*Annual Drinking Water Quality Report for 2010
Village of Painted Post
261 Steuben Street
Painted Post, NY 14870
(Public Water Supply ID# NY001222)*

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It should be noted that all drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the New York State Health Department district office in Hornell at (607) 324-8371.

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, turbidity, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, total trihalomethanes, and synthetic organic compounds. None of the compounds we analyzed for were detected in your drinking water.

Table of Detected Contaminants							
Contaminant	Violation Yes/No	Date of Sample	Level Detected (Avg/Max) (Range)	Unit Measurement	MCLG	Regulatory Limit (MCL, TT or AL)	Likely Source of Contamination
INORGANIC CONTAMINANTS							
LEAD	N	6/13/09	<.5 - 1.5 90 th percentile ¹ = 1.3	ug/l	15	AL = 15	Corrosion of household plumbing; Erosion of natural deposits
COPPER	N	6/13/09	<0.06 - 1.16 90 th percentile ² = 1.07	mg/l	1.3	AL = 1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives
BARIUM	N	2/22/10	0.43	mg/l	2	2	Discharge of drilling wastes; discharge from metal refineries; Erosion of natural deposits
NITRATE Well # 2 Well # 3 Well # 4	N	10/26/06 11/10/10 11/10/10	.87 <0.05 <0.05	mg/l	10	10	Runoff from fertilizer use; Leaching from septic tanks; Sewage; Erosion of natural deposits
Fluoride	N	Monthly	.55 to 1.34	mg/l	NA	2.2	Water additive to promote strong teeth

VOLATILE ORGANIC CONTAMINANTS							
Total Trihalomethanes [TTHMS]							
[chloroform, bromodichloromethane, dibromochloromethane and bromoform]	N	8/17/10 2/2/10	7.63 MRT 4.7 entry point	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
1,1,1 Trichloroethane	N	2/22/10	0.6	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
HALOACETIC ACIDS [HAA5s]							
[mono-, di and trichloroacetic acid, and mono- and dibromoacetic acid]	N	8/17/10	ND	ug/l	60	60	By-product of drinking water chlorination.
RADIOLOGICAL							
Well No. 3 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.23/3.3 .47/31	pCi/L	0	5	Erosion of Natural Deposits
Well No. 4 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.29/2.6 .36/.28	pCi/L	0	5	Erosion of Natural Deposits
Well No. 3 & 4 Combined Radium 226/228 Radium 228	N	3/19/08 5/22/08	.23/1.39 -.22	pCi/L	0	5	Erosion of Natural Deposits

1 - The level presented represents the 90th percentile of the 10 sites tested. A percentile is a value on a scale of 100 that indicates the percent of a distribution that is equal to or below it. The 90th percentile is equal to or greater than 90% of the lead values detected at your water system. In this case, 10 samples were collected at your water system and the 90th percentile value was the 1.30 ug/l value. The highest value was 1.5 ug/l. The action level for lead was not exceeded at any of the sites tested.

2 - The level presented represents the 90th percentile of the 10 samples collected. The 90th percentile value was the 1.07 mg/l value. The highest value was 1.16 mg/l. The action level for copper was reached at one of the sites tested.

Definitions:

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Maximum Residual Disinfectant Level (MRDL): The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

Maximum Residual Disinfectant Level Goal (MRDLG): The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contamination.

Maximum Residual Time (MRT): Water that has been in the distribution system the longest period of time.

Action Level (AL): The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

Treatment Technique (TT): A required process intended to reduce the level of a contaminant in drinking water.

Non-Detects (ND): Laboratory analysis indicates that the constituent is not present.

Nephelometric Turbidity Unit (NTU): A measure of the clarity of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

Milligrams per liter (mg/l): Corresponds to one part of liquid in one million parts of liquid (parts per million - ppm).

Micrograms per liter (ug/l): Corresponds to one part of liquid in one billion parts of liquid (parts per billion - ppb).

Nanograms per liter (ng/l): Corresponds to one part of liquid to one trillion parts of liquid (parts per trillion - ppt).

Picograms per liter (pg/l): Corresponds to one part per of liquid to one quadrillion parts of liquid (parts per quadrillion - ppq).

Picocuries per liter (pCi/L): A measure of the radioactivity in water.

Millirems per year (mrem/yr): A measure of radiation absorbed by the body.

Million Fibers per Liter (MFL): A measure of the presence of asbestos fibers that are longer than 10 micrometers.

WHAT DOES THIS INFORMATION MEAN?

As you can see by the table, our system had no violations. We have learned through our testing that some contaminants have been detected; however, these contaminants were detected below the level allowed by the State.

If present, elevated levels of lead can cause serious health problems, especially for pregnant women, infants, and young children. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. Village of Painted Post is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>.

DO I NEED TO TAKE SPECIAL PRECAUTIONS?

Although our drinking water met or exceeded state and federal regulations, some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium, Giardia and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

INFORMATION ON FLUORIDE ADDITION

Our system is one of the many drinking water systems in New York State that provides drinking water with a controlled, low level of fluoride for consumer dental health protection. According to the United States Centers for Disease Control, fluoride is very effective in preventing cavities when present in drinking water at an optimal range from 0.8 to 1.2 mg/l (parts per million). To ensure that the fluoride supplement in your water provides optimal dental protection, the State Department of Health requires that the Village of Painted Post monitor fluoride levels on a daily basis. Last year monitoring showed fluoride levels in your water were in the optimal range 67% of the time. None of the monitoring results showed fluoride at levels that approach the 2.2 mg/l MCL for fluoride.

WHY SAVE WATER AND HOW TO AVOID WASTING IT?

Although our system has an adequate amount of water to meet present and future demands, there are a number of reasons why it is important to conserve water:

- ◆ Saving water saves energy and some of the costs associated with both of these necessities of life;
- ◆ Saving water reduces the cost of energy required to pump water and the need to construct costly new wells, pumping systems and water towers; and
- ◆ Saving water lessens the strain on the water system during a dry spell or drought, helping to avoid severe water use restrictions so that essential fire fighting needs are met.

You can play a role in conserving water by becoming conscious of the amount of water your household is using, and by looking for ways to use less whenever you can. It is not hard to conserve water. Conservation tips include:

- ◆ Automatic dishwashers use 15 gallons for every cycle, regardless of how many dishes are loaded. So get a run for your money and load it to capacity.
- ◆ Turn off the tap when brushing your teeth.
- ◆ Check every faucet in your home for leaks. Just a slow drip can waste 15 to 20 gallons a day. Fix it and you can save almost 6,000 gallons per year.
- ◆ Check your toilets for leaks by putting a few drops of food coloring in the tank, watch for a few minutes to see if the color shows up in the bowl. It is not uncommon to lose up to 100 gallons a day from one of these otherwise invisible toilet leaks. Fix it and you save more than 30,000 gallons a year.

CLOSING

Thank you for allowing us to continue to provide your family with quality drinking water this year. In order to maintain a safe and dependable water supply we sometimes need to make improvements that will benefit all of our customers. The costs of these improvements may be reflected in the rate structure. Rate adjustments may be necessary in order to address these improvements. We ask that all our customers help us protect our water sources, which are the heart of our community. Please call our office if you have questions.

Annual Drinking Water Quality Report for 2009
Village of Painted Post
261 Steuben Street
Painted Post, NY 14870
(Public Water Supply ID# NY001222)

INTRODUCTION

To comply with State regulations, Village of Painted Post, will be annually issuing a report describing the quality of your drinking water. The purpose of this report is to raise your understanding of drinking water and awareness of the need to protect our drinking water sources. Last year, your tap water met all State drinking water health standards. We are proud to report that our system did not violate a maximum contaminant level or any other water quality standard. This report provides an overview of last year's water quality. Included are details about where your water comes from, what it contains, and how it compares to State standards.

If you have any questions about this report or concerning your drinking water, please contact Larry E. Smith, Superintendent of Public Works at (607) 962-8724. We want you to be informed about your drinking water. If you want to learn more, please attend any of our regularly scheduled village board meetings. The meetings are held on the second Monday of each month at 7:00 PM at the Village Hall on the corner of Steuben Street and West High Street

WHERE DOES OUR WATER COME FROM?

In general, the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants. In order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDA's regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

Our water system serves approximately 1842 people through approximately 769 service connections. In addition, our water system provides potable water to the Village of Riverside and portions of the Town of Erwin and Corning. Our water source is from three groundwater wells located at Craig Park, Maple Avenue near W. High Street and Fairview Avenue near Fairview Avenue Extension. The wells vary from approximately 78 feet deep to 100 feet deep. The water is conveyed to the water treatment plant in Craig Park where it is chlorinated for disinfection purposes, fluoridated for dental health purposes, and phosphate added for corrosion control prior to distribution.

Our Source Water Assessment Summary is not available from the NYS Department of Health at this time.

ARE THERE CONTAMINANTS IN OUR DRINKING WATER?

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, total trihalomethanes, haloacetic acids, radiological and synthetic organic compounds. The table presented below depicts which compounds were detected in your drinking water. The State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently. Some of our data, though representative, are more than one year old.

It should be noted that all drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the New York State Health Department district office in Hornell at (607) 324-8371.

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Table of Detected Contaminants							
Contaminant	Violation Yes/No	Date of Sample	Level Detected (Avg/Max) (Range)	Unit Measurement	MCLG	Regulatory Limit (MCL, TT or AL)	Likely Source of Contamination
INORGANIC CONTAMINANTS							
LEAD	N	6/13/09	<.5 - 1.5 90 th percentile ¹ = 1.3	ug/l	15	AL = 15	Corrosion of household plumbing; Erosion of natural deposits
COPPER	N	6/13/09	<0.06 - 1.16 90 th percentile ² = 1.07	mg/l	1.3	AL = 1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives
BARIUM	N	9/18/07	0.30	mg/l	2	2	Discharge of drilling wastes; discharge from metal refineries; Erosion of natural deposits
NITRATE Well # 2 Well # 3 Well # 4	N	10/26/06 11/17/09 11/17/09	.87 .99 .89	mg/l	10	10	Runoff from fertilizer use; Leaching from septic tanks; Sewage; Erosion of natural deposits
SULFATE	N	8/24/04	13 - 39 24	mg/l	N/A	250	Naturally Occurring

Fluoride	N	Monthly 9/18/07	.5 to 1.1 .6	mg/l	NA	2.2	Water additive to promote strong teeth
SYNTHETIC ORGANIC CONTAMINANTS							
Total Trihalomethanes [TTHMs]							
[chloroform, bromodichloromethane, dibromochloromethane and bromoform]	N	9/05/07	Well 3 -.5 Well 4 -.6 5.7 distribution	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
HALOACETIC ACIDS [HAA5s]							
[mono-, di and trichloroacetic acid, and mono- and dibromoacetic acid]	N	9/5/07	ND	ug/l	60	60	By-product of drinking water chlorination.
RADIOLOGICAL							
Well No. 3 Radium 226/228	N	9/18/07 12/20/07	.23/3.3 .47/31	pCi/L	0	5	Erosion of Natural Deposits
Well No. 4 Radium 226/228	N	9/18/07 12/20/07	.29/2.6 .36/28	pCi/L	0	5	Erosion of Natural Deposits
Well No. 3 & 4 Combined Radium 226/228	N	3/19/08 5/22/08	.23/1.39 -22	pCi/L	0	5	Erosion of Natural Deposits
VOLATILE ORGANIC COMPOUNDS							

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WHAT DOES THIS INFORMATION MEAN?

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*Annual Drinking Water Quality Report for 2008
Village of Painted Post
261 Steuben Street
Painted Post, New York 14870
(Public Water Supply ID# NYS5001222)*

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Table of Detected Contaminants							
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INORGANIC CONTAMINANTS							
LEAD	N	9/14/06	<1-84 90 th percentile ¹ = 5	ug/l	15	AL = 15	Corrosion of household plumbing; Erosion of natural deposits
COPPER	N	9/14/06	<0.25-1.3 90 th percentile ² = .80	mg/l	1.3	AL = 1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives
BARIUM	N	9/18/07	0.30	mg/l	2	2	Discharge of drilling wastes; discharge from metal refineries; Erosion of natural deposits
NITRATE Well # 2 Well # 3 Well # 4	N	10/26/06 5/21/08 5/21/08	.87 .78 .96	mg/l	10	10	Runoff from fertilizer use; Leaching from septic tanks; Sewage; Erosion of natural deposits
SULFATE	N	8/24/04	13-39 24	mg/l	N/A	250	Naturally Occurring
Fluoride	N	Monthly 9/18/07	.5 to 1.1 .6	mg/l	NA	2.2	Water additive to promote strong teeth
SYNTHETIC ORGANIC CONTAMINANTS							
Total Trihalomethanes [TTHMS]							

SYNTHETIC ORGANIC CONTAMINANTS							
Total Trihalomethanes [TTHMs]							
[chloroform, bromodichloromethane, dibromochloromethane and bromoform]	N	9/05/07 8/24/04	Well 3 -.5 Well 4 -.6 5.7 distribution	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
HALOACETIC ACIDS [HAA5s]							
[mono-, di and tri-chloroacetic acid, and mono- and di-bromoacetic acid]	N	8/24/04	1.10	ug/l	60	60	By-product of drinking water chlorination.
RADIOLOGICAL							
Well No. 3 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.23/3.3 .47/31	pCi/L	0	5	Erosion of Natural Deposits
Well No. 4 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.29/2.6 .36/28	pCi/L	0	5	Erosion of Natural Deposits
Well No. 3 & 4 Combined Radium 226/228 Radium 228	N	3/19/08 5/22/08	.23/1.39 -.22	pCi/L	0	5	Erosion of Natural Deposits
VOLATILE ORGANIC COMPOUNDS							

1 - The level presented represents the 90th percentile of the 10 sites tested. A percentile is a value on a scale of 100 that indicates the percent of a distribution that is equal to or below it. The 90th percentile is equal to or greater than 90% of the lead values detected at your water system. In this case, 10 samples were collected at your water system and the 90th percentile value was the 0.005 mg/l value. The highest value was .84 mg/l. The action level for lead was not exceeded at any of the sites tested.

2 - The level presented represents the 90th percentile of the 10 samples collected. The 90th percentile value was the 0.08 mg/l value. The highest value was 1.3 mg/l. The action level for copper was reached at one of the sites tested.

Definitions:

Maximum Contaminant Level (MCL): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible.

Maximum Contaminant Level Goal (MCLG): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

Maximum Residual Disinfectant Level (MRDL): The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

Maximum Residual Disinfectant Level Goal (MRDLG): The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contamination.

Action Level (AL): The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

Treatment Technique (TT): A required process intended to reduce the level of a contaminant in drinking water.

Non-Detects (ND): Laboratory analysis indicates that the constituent is not present.

Nephelometric Turbidity Unit (NTU): A measure of the clarity of water. Turbidity in excess of 5 NTU is just noticeable to the average person.

Milligrams per liter (mg/l): Corresponds to one part of liquid in one million parts of liquid (parts per million - ppm).

Micrograms per liter (ug/l): Corresponds to one part of liquid in one billion parts of liquid (parts per billion - ppb).

Nanograms per liter (ng/l): Corresponds to one part of liquid to one trillion parts of liquid (parts per trillion - ppt).

Picograms per liter (pg/l): Corresponds to one part per of liquid to one quadrillion parts of liquid (parts per quadrillion - ppq).

Picocuries per liter (pCi/L): A measure of the radioactivity in water.

Millirems per year (mrem/yr): A measure of radiation absorbed by the body.

Million Fibers per Liter (MFL): A measure of the presence of asbestos fibers that are longer than 10 micrometers.

WHAT DOES THIS INFORMATION MEAN?

As you can see by the table, our system had no violations. We have learned through our testing that some contaminants have been detected; however, these contaminants were detected below the level allowed by the State.

If present, elevated levels of lead can cause serious health problems, especially for pregnant women, infants, and young children. It is possible that lead levels at your home may be higher than at other homes in the community as a result of materials used in your home's plumbing. [Village of Painted Post] is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at <http://www.epa.gov/safewater/lead>.

IS OUR WATER SYSTEM MEETING OTHER RULES THAT GOVERN OPERATIONS?

During 2008, our system was in compliance with applicable State drinking water operating, monitoring and reporting requirements.

DO I NEED TO TAKE SPECIAL PRECAUTIONS?

Although our drinking water met or exceeded state and federal regulations, some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium, Giardia and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

INFORMATION ON FLUORIDE ADDITION

Our system is one of the many drinking water systems in New York State that provides drinking water with a controlled, low level of fluoride for consumer dental health protection. According to the United States Centers for Disease Control, fluoride is very effective in preventing cavities when present in drinking water at an optimal range from 0.8 to 1.2 mg/l (parts per million). To ensure that the fluoride supplement in your water provides optimal dental protection, the State Department of Health requires that we monitor fluoride levels on a daily basis. During 2008 monitoring showed fluoride levels in your water were in the optimal range 33 % to 100% (67% Ave.) of the time. None of the monitoring results showed fluoride at levels that approach the 2.2 mg/l MCL for fluoride.

WHY SAVE WATER AND HOW TO AVOID WASTING IT?

Although our system has an adequate amount of water to meet present and future demands, there are a number of reasons why it is important to conserve water:

- ◆ Saving water saves energy and some of the costs associated with both of these necessities of life;
- ◆ Saving water reduces the cost of energy required to pump water and the need to construct costly new wells, pumping systems and water towers; and
- ◆ Saving water lessens the strain on the water system during a dry spell or drought, helping to avoid severe water use restrictions so that essential fire fighting needs are met.

You can play a role in conserving water by becoming conscious of the amount of water your household is using, and by looking for ways to use less whenever you can. It is not hard to conserve water. Conservation tips include:

- ◆ Automatic dishwashers use 15 gallons for every cycle, regardless of how many dishes are loaded. So get a run for your money and load it to capacity.
- ◆ Turn off the tap when brushing your teeth.
- ◆ Check every faucet in your home for leaks. Just a slow drip can waste 15 to 20 gallons a day. Fix it and you can save almost 6,000 gallons per year.
- ◆ Check your toilets for leaks by putting a few drops of food coloring in the tank, watch for a few minutes to see if the color shows up in the bowl. It is not uncommon to lose up to 100 gallons a day from one of these otherwise invisible toilet leaks. Fix it and you save more than 30,000 gallons a year.

CLOSING

Thank you for allowing us to continue to provide your family with quality drinking water this year. In order to maintain a safe and dependable water supply we sometimes need to make improvements that will benefit all of our customers. The costs of these improvements may be reflected in the rate structure. Rate adjustments may be necessary in order to address these improvements. We ask that all our customers help us protect our water sources, which are the heart of our community. Please call our office if you have questions.

*Annual Drinking Water Quality Report for 2007
Village of Painted Post
261 Steuben Street
Painted Post, New York 14870
(Public Water Supply ID#NYS5001222)*

INTRODUCTION

To comply with State regulations, Village Painted Post will be annually issuing a report describing the quality of your drinking water. The purpose of this report is to raise your understanding of drinking water and awareness of the need to protect our drinking water sources. This report provides an overview of last year's water quality. Included are details about where your water comes from, what it contains, and how it compares to State standards.

If you have any questions about this report or concerning your drinking water, please contact Larry E. Smith, Superintendent of Public Works at (607) 962-8724. We want you to be informed about your drinking water. If you want to learn more, please attend any of our regularly scheduled village board meetings. The meetings are held on the second Monday of each month at 7:00 PM at the Village Hall on the corner of Steuben Street and West High Street.

WHERE DOES OUR WATER COME FROM?

In general, the sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activities. Contaminants that may be present in source water include: microbial contaminants; inorganic contaminants; pesticides and herbicides; organic chemical contaminants; and radioactive contaminants. In order to ensure that tap water is safe to drink, the State and the EPA prescribe regulations which limit the amount of certain contaminants in water provided by public water systems. The State Health Department's and the FDA's regulations establish limits for contaminants in bottled water which must provide the same protection for public health.

Our water source is from three groundwater wells located at Craig Park, Maple Avenue near W. High Street and Fairview Avenue near Fairview Avenue Extension. The wells vary from approximately 78 feet deep to 100 feet deep. The water is conveyed to the water treatment plant in Craig Park where it is chlorinated for disinfection purposes, fluoridated for dental health purposes, and phosphate added for corrosion control prior to distribution. Our water system serves approximately 1842 people through approximately 769 service connections. In addition, our water system provides potable water to the Village of Riverside and portions of the Town of Erwin and Corning.

A Source Water Assessment Summary will be included if the data becomes available from the NYS Department of Health.

ARE THERE CONTAMINANTS IN OUR DRINKING WATER?

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, pesticides, herbicides, inorganic compounds, nitrate, lead and copper, volatile organic compounds, semi-volatile organic compounds, total trihalomethanes, haloacetic acids, radiological and synthetic organic compounds. The table presented below depicts which compounds were detected in your drinking water. The State allows us to test for some contaminants less than once per year because the concentrations of these contaminants do not change frequently. Some of our data, though representative, are more than one year old.

It should be noted that all drinking water, including bottled drinking water, may be reasonably expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline (800-426-4791) or the New York State Health Department district office in Hornell at (607) 324-8371.

As the State regulations require, we routinely test your drinking water for numerous contaminants. These contaminants include: total coliform, inorganic compounds, nitrate, nitrite, lead and copper, volatile organic compounds, total trihalomethanes, and synthetic organic compounds. Some of the compounds we analyzed for were detected in your drinking water.

Table of Detected Contaminants							
Contaminant	Violation Yes/No	Date of Sample	Level Detected (Avg/Max) (Range)	Unit Measure- ment	MCLG	Regulatory Limit (MCL, TT or AL)	Likely Source of Contamination
INORGANIC CONTAMINANTS							
LEAD	N	9/14/06	<1-84 90 th percentile ¹ = 5	ug/l	15	AL=15	Corrosion of household plumbing; Erosion of natural deposits
COPPER	N	9/14/06	<0.25-1.3 90 th percentile ² = .80	mg/l	1.3	AL = 1.3	Corrosion of household plumbing systems; Erosion of natural deposits; Leaching from wood preservatives
BARIUM	N	9/18/07	0.30	mg/l	2	2	Discharge of drilling wastes; discharge from metal refineries; Erosion of natural deposits
NITRATE Well # 2 Well # 3 Well # 4	N	10/26/06 9/18/07 9/18/07	.87 ND .86	mg/l	10	10	Runoff from fertilizer use; Leaching from septic tanks; Sewage; Erosion of natural deposits
SULFATE	N	8/24/04	13-39 24	mg/l	N/A	250	Naturally Occurring
Fluoride	N	Monthly	.5 to 1.1	mg/l	NA	2.2	Water additive to promote strong teeth

SYNTHETIC ORGANIC CONTAMINANTS							
Total Trihalomethanes [TTHMs]							
[chloroform, bromodichloromethane, dibromochloromethane and bromoform]	N	9/05/07 8/24/04	.55 wells 5.7 distribution	ug/l	80	80	By-product of drinking water chlorination needed to kill harmful organisms. Formed when source water contains large amounts of organic matter.
HALOACETIC ACIDS [HAA5s]							
[mono-, di and trichloroacetic acid, and mono- and dibromoacetic acid]	N	8/24/04	1.10	ug/l	60	60	By-product of drinking water chlorination.
RADIOLOGICAL							
Well No. 3 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.23/3.3 .47/3.1	pCi/L	0	5	Erosion of Natural Deposits
Well No. 4 Radium 226/228 Radium 226/228	N	9/18/07 12/20/07	.29/2.6 .36/2.8	pCi/L	0	5	Erosion of Natural Deposits
Well No. 3 & 4 Combined Radium 226/228	N	3/19/08	.81/1.39	pCi/L	0	5	Erosion of Natural Deposits
VOLATILE ORGANIC COMPOUNDS							

Notes:

1 - The level presented represents the 90th percentile of the 10 sites tested. A percentile is a value on a scale of 100 that indicates the percent of a distribution that is equal to or below it. The 90th percentile is equal to or greater than 90% of the lead values detected at your water system. In this case, 10 samples were collected at your water system and the 90th percentile value was the 0.005 mg/l value. The highest value was .84 mg/l. The action level for lead was not exceeded at any of the sites tested.

2 - The level presented represents the 90th percentile of the 10 samples collected. The 90th percentile value was the 0.08 mg/l value. The highest value was 1.3 mg/l. The action level for copper was reached at one of the sites tested.

Definitions:

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Million Fibers per Liter (MFL): A measure of the presence of asbestos fibers that are longer than 10 micrometers.

WHAT DOES THIS INFORMATION MEAN?

As you can see by the table, our system had no violations. We have learned through our testing that some contaminants have been detected; however, these contaminants were detected below the level allowed by the State.

IS OUR WATER SYSTEM MEETING OTHER RULES THAT GOVERN OPERATIONS?

During 2007, our system was in compliance with applicable State drinking water operating, monitoring and reporting requirements.

DO I NEED TO TAKE SPECIAL PRECAUTIONS?

Although our drinking water met or exceeded state and federal regulations, some people may be more vulnerable to disease causing microorganisms or pathogens in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice from their health care provider about their drinking water. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium, Giardia and other microbial pathogens are available from the Safe Drinking Water Hotline (800-426-4791).

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- ♦ Saving water saves energy and some of the costs associated with both of these necessities of life;
- ♦ Saving water reduces the cost of energy required to pump water and the need to construct costly new wells, pumping systems and water towers; and
- ♦ Saving water lessens the strain on the water system during a dry spell or drought, helping to avoid severe water use restrictions so that essential fire fighting needs are met.

You can play a role in conserving water by becoming conscious of the amount of water your household is using, and by looking for ways to use less whenever you can. It is not hard to conserve water. Conservation tips include:

- ♦ Automatic dishwashers use 15 gallons for every cycle, regardless of how many dishes are loaded. So get a run for your money and load it to capacity.
- ♦ Turn off the tap when brushing your teeth.
- ♦ Check every faucet in your home for leaks. Just a slow drip can waste 15 to 20 gallons a day. Fix it and you can save almost 6,000 gallons per year.
- ♦ Check your toilets for leaks by putting a few drops of food coloring in the tank, watch for a few minutes to see if the color shows up in the bowl. It is not uncommon to lose up to 100 gallons a day from one of these otherwise invisible toilet leaks. Fix it and you save more than 30,000 gallons a year.

CLOSING

Thank you for allowing us to continue to provide your family with quality drinking water this year. In order to maintain a safe and dependable water supply we sometimes need to make improvements that will benefit all of our customers. The costs of these improvements may be reflected in the rate structure. Rate adjustments may be necessary in order to address these improvements. We ask that all our customers help us protect our water sources, which are the heart of our community. Please call our office if you have questions.



VILLAGE OF PAINTED POST

BOX 110
PAINTED POST, NY 14870-0110
(607) 962-4604

Village of Painted Post

WATER SUPPLY EMERGENCY PLAN

October 2007

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 - 2. Well No.3.
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 - 4. System Demand
 - 5. Storage
 - 6. Standby Power
 - 7. High Service System

- II. Communication

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- V. Emergency Action Plans
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 - 3. Prolong water outage
 - 4. Depletion of well source
 - 5. Water contamination
 - 6. Gaseous chlorinator failure
 - 7. Liquid chlorinator failure
 - 8. Loss of pressure or storage
 - 9. Infrastructure security

- VI. Appendix Notification Roster

I. Description of System

Our water source is from three groundwater wells located at Craig Park, Maple Avenue near W. High Street and Fairview Avenue near Fairview Avenue Extension. The wells vary from approximately 78 feet deep to 100 feet deep. The water is conveyed to the water treatment plant in Craig Park where it is chlorinated for disinfection purposes, fluoridated for dental health purposes, and phosphate added for corrosion control prior to distribution. Our water system serves approximately 1842 people through approximately 755 service connections. In addition, our water system provides potable water to the Village of Riverside and portions of the Town of Erwin and Corning.

1. Production Wells

- Well No.2 also known as Fairview Ave. well. It's located at the intersection of Fairview Ave. and Steuben St. Ext.

General Information

Pump Motor Size: 60hp turbine

Well Production: 400 gpm

Treatment: Chlorinator: 50 gal liquid chlorine tank chemical feed pump

- Well No.3 also known as Craig Park well. Located at the East end of Craig Park.

General Information

Pump Motor Size: 75hp turbine

Well Production: 500gpm

Treatment Chlorinator: 150 pound gas cylinders located at the Water Treatment Plant in Craig Park

- Well No.4 also known as Maple Ave. well. It's located in Maple Ave. Park at W. High St. & Maple Ave.

General Information

Pump Motor Size: 75hp turbine

Well Production: 900gpm

Treatment Chlorinator: 150 pound gas cylinders located at the Water Treatment Plant in Craig Park

2. System Demand: The Village uses an average of .6mgd and a peak of 1.2 mg
3. Water Storage: 1,500,000 gal. reservoir located at the end of Reservoir Rd.
4. Standby Power: 350kw generator located at the W.T.P. in Craig Park. Provides power to Wells No. 3 & 4, W.T.P and booster pump station
5. High service system: also known as West Hill Terrace system
 - Pump: 20hp booster, pump from main system
 - Water Storage: 50,000 standpipe
 - Emergency pumps: 60hp electric to meet fire flows
85hp diesel for power outage

Note: Distribution maps can be obtained from the W.T.P., Supt. of PW or Dept Vehicle

II. Communication

Telephone and Cell phones are the primary link to convey information. Should this service be lost, 2 way radios will be used. Most vehicles are equipped with radios. Key personnel have home monitors that receive D.P.W. frequency. The Village has portable radios available if required. The base radio is located in the Village Clerks office.

III. Who is in Charge

The following individuals will be in charge during an emergency:

- 1st. Superintendent Larry Smith
- 2nd. Water Treatment Plant Operator Mike Peters
- 3rd. Deputy Superintendent Mike Button

In the event all three individuals are unavailable, the Mayor or representative will designate an individual to be in charge.

IV. Who gets Notified

Appendix A. Notification roster, contains phone numbers of Key personal of organizations which may require notification during an emergency. Each action plan states who must be notified.

V. Emergency Action Plans

Plans are included for the most probable emergencies that could occur in the Village of Painted Post.

- Pump Failure:

The village uses 3 line shaft turbine pumps that provide 2.5 mgd. The most probable failure is a electrical outage. There is approximately 20 hrs of storage. During an electrical failure the standby generator would be activated thereby restoring power to No 3&4 wells. The electric company would be contacted and a determination made as to how long the outage would last. (See notification schedule). If the power cannot be restored or the generator fails, the Steuben County Local Public Health Engineer will be notified and arrangements made to bring in bulk water. In the event of mechanical failure the pump manufacturer will be notified. (See notification schedule) In the event that all three pumps are out of services due to mechanical failure and cannot be restored to service within 6 hrs. The following notifications will be made.

- 1) Local Public Health Engineer
- 2) Media
- 3) Fire Dept.

- Pump failure at the high service tank

In the event that the booster pump fails, one of two or both standby pumps will be used. In the unlikely event that all three pumps will be out of service, for more than 30 hours a fire engine can boost, water from the hydrant at 133 Thompson Dr. to the hydrant at the corner of Craig Dr. & Reservoir Rd.

- Prolong Water Outage

Contamination, pump failure, transmission main break, aquifer depletion and water tank failure can cause a prolong water outage. In this instance the following notifications should be made:

- 1) Local Public Health Engineer
- 2) Media
- 3) Fire Dept.
- 4) Town of Erwin, Village of Riverside, City of Corning

If water cannot be readily provided, water tank trailers should be set up at the following locations

- Depot parking lot
- Depletion of Well Source

If the pumping level in one of the three wells drops to a point of 10 feet above the low water cutoff, an educational program will be initiated to inform the community to conserve water. Standard articles will be sent to the Corning leader requesting that the community conserve water. In addition a form letter will be sent to the school principals asking that they educate the students about the water shortage. If the pumping level drops to 8 feet above low water cutoff, lawn sprinkling and car washing will be prohibited. Also the frequency of water level readings will be increased. If the well continues to deplete and reaches a point where the low water cutoff is activated the well will be shut down. In the event arrangements will be made to provide bulk water.

If water production and/or storage cannot be restored arrangements approvals shall be obtained to open the water distribution interconnection between the City of Corning and the village. If required a temporary connection between the Town of Erwin and the village can be established along New York State Route 415 west of the village. (note: due the reversal of water flow substantial flushing will be required to obtain good water quality)

- Water Contamination

Highway 415 is located 100 feet from Village Well No.3. This is the most probable source of contamination. An accident at this location, could permanently contaminate the well supply. Local police agencies have been informed to contact the village concerning any accident near the well vicinity. If it involves a chemical truck the placard information will be obtained and the chemical identified. The following notifications must be made if it involves a chemical spill.

- 1) Fire Department
- 2) Local Public Health Engineer
- 3) Rochester Regional Office
- 4) D.O.T.
- 5) D.E.C.
- 6) Chemtrec
- 7) Local Civil Defense Director

- Gaseous Chlorinator Failure

When chlorination is inoperative the operator will notify the Local Health Engineer within 48 hrs. The well water has no bacteriological problem; therefore minimizing the impact of a chlorinator failure. During the chlorinator failure bacteriological samples will be taken at designated points to assure the water is safe to drink. If any bacteriological samples indicate contamination, check samples will be taken. If the samples exceed the N.Y.S. M.C.L. a boil water notice will be issued via the news, T.V. & Radio.

- Liquid Chlorine failure

Well would be shut down until repairs were made.

- Loss of pressure or storage

If the pressure in the water system drops below 35psi the fire department will be notified. If the pressure is lost in the system or a portion of the system, for more than 4 hours, the Steuben County Health Dept. will be notified. Pressure can be preserved by pumping against a closed valve while cooling the pump impellers thru a hydrant.

- Infrastructure Security

1. Lock all doors and gates when facilities are left unattended.
2. Remove keys from vehicles when unattended.
3. Ask questions of strangers in or at Village facilities.
4. Make sure all outside lighting is in working order.
5. All village facilities shall be marked with "Authorized Personnel Only" signs.
6. Report any suspicious activity or threats to the police dept.

Appendix A Notification Roster

DPW Superintendent, Larry Smith

Work - 962 - 8724 Home - 936 - 4012

DPW Deputy Superintendent, Mike Button

Work - 962 - 5723 Home - 962 - 5661

Water Treatment Plant Operator, Mike Peters

Work - 962 - 5434 Home - 546 - 7606

Assistant Water Treatment Plant Operator, Steve Benedict

Work - 962 - 5434/962 - 1133 Home 962 - 3669

Village Mayor, Edward A. Franklin, Sr.

Work - 936-4106 Home -962-7847

Village Police - 922-4604/ 962-4605 or 911

Village Clerk, Ann Taft

Work - 922-4604

N.Y.S. Dept. of Health Hornell office - 324-8371

N. Y. S. Dept. of Health Hotline. - 518-465-9720

N.Y.S. Dept. of Environmental Conservation Hotline - 800-457-7362

Steuben County Office of Emergency Services - 664-2700

D.O.T., Emergency - 800-526-3436

Telephone. repair - 890-7711

Electric Co. Emergency - 796-2387

Gas Co. Emergency - 936-3755

State Police, Painted Post - 962-6864, 800-252-0820 or 911

Painted Post Fire Dept. - 911

Amrex Chlorine - 772-8784 or CHEMTRAC

WCBA radio - 962-4646

WETM-TV - 733-5518

Moody Well Service - 800-836-5040

VILLAGE OF PAINTED POST

BOX 110
PAINTED POST, NY 14870
(607) 962-4604

THREAT EVALUATION INFORMATION FORM

To be used at the time or immediately following the receipt of a threat of contamination or other disruption to the Water System

Date threat was received: _____

Time: _____

Key words in threat: _____

Tell caller that you need to be as complete as possible in his/her message in order to accurately perceive the nature of the threat.

Perpetrator's Profile:

Sex: Male Female Not Sure

Age: Adult Teen Child Not Sure

Voice: Normal Muffled Slurred Calm Nervous Excited

Is there a foreign accent? Yes No

Background noises (if any):

Does the caller claim an affiliation with a particular organization?

Yes No If so, what organization? _____

Name of person receiving threat: _____

Location at time threat was received: _____

EXHIBIT – JANUARY 10, 2013 LETTER FROM JOSEPH D. PICCIOTTI TO JUDGE RENZI,
WITH ENCLOSURES [599-619]

January 10, 2013

VIA REGULAR MAIL

Honorable Alexander R. Renzi
Justice of the Supreme Court
545 Hall of Justice
Rochester, NY 14614

Re: Scheduling Order Regarding Submission of Papers on
the Pending Motions and Follow up on Discovery
Issues: Sierra Club, et al. v. Village of Painted Post, et
al.
Index No. 2012-0810

Dear Judge Renzi:

I represent respondents the Village of Painted Post (“the Village”) and SWEPI, LP (“SWEPI”) (collectively the Village and SWEPI may be referred to as “Respondents”). This letter is written at your direction to set forth the Court’s determination on the schedule for submission of opposition and reply papers on the pending motions which the Court made during the conference call with the Court on Monday January 7, 2013. I am also enclosing the affidavits requested by the Court concerning the discovery issues discussed during that call, as well as providing the documents the Court directed SWEPI to produce (we have provided copies of each of the documents referenced to counsel for each of the parties).

Concerning scheduling of the submission of papers on the pending motions, the Court has directed that Petitioners have up to and including January 28, 2013 to file and serve any papers they intend to serve in opposition to the motion for summary judgment or to dismiss filed on behalf of Respondents, the Village of Painted Post and SWEPI, LP, and filed on behalf of the Wellsboro and Corning Railroad LLC. The Respondents will have up to and including February 22nd to file and serve any reply papers. The Court noted that should Respondents not file their papers until February 25th, that Petitioners will have the opportunity to serve sur-reply papers, but only if respondents fail to file and serve their papers by February 22nd.

We also enclose, pursuant to the Court’s direction, affidavits from Larry Smith and Bill Gough. (Messrs. Gough and Smith submitted affidavits on the Respondents’ motion filed in early August that addressed issues with the Village wells). As you can see, the enclosed affidavits confirm that neither Mr. Gough or Mr. Smith reviewed any Village records other than records recently provided to the Sierra Club pursuant to the June 6, 2012 FOIL filed by it.

HARRIS BEACH ^{PLLC}
ATTORNEYS AT LAW

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

JOSEPH D. PICCIOTTI

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JPICCIOTTI@HARRISBEACH.COM

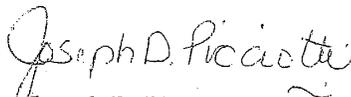
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HARRIS BEACH PLLC
ATTORNEYS AT LAW

In addition, we enclose copies of documents I obtained from SWEPI this week following the call with the Court on Monday which SWEPI has stated constitute the documents it submitted to the Susquehanna River Basin Commission ("SRBC") associated with any application it filed pursuant to the withdrawal of water from the Village's wells under the contract with SWEPI and the Village, as well as any copies of approvals SWEPI received from the SRBC.

Please contact me if you have any questions.

Respectfully submitted,


Joseph D. Picciotti

Enclosures

cc: Rachel Treichler, Esq. w/encl.
Richard J. Lippes, Esq. w/encl.
John K. Fiorilla, Esq. w/encl.

Wright, Stephen A SEPCO-UAS/E/USON

From: Miller, Glenda [gmiller@srbc.net]
Sent: Tuesday, July 24, 2012 4:31 PM
To: Wright, Stephen A SEPCO-UAS/E/USON
Cc: Beauduy, Tom; Richenderfer, Jim; Dehoff, Andrew; Ballaron, Paula; Larry Smith (ppdpw@stny.rr.com); mdholt@gw.dec.state.ny.us; pbfreeha@gw.dec.state.ny.us; lacollar@gw.dec.state.ny.us; bjfield@gw.state.ny.us; kfsanfor@gw.dec.state.ny.us; kplynch@gw.dec.state.ny.us
Subject: SWEPI, LP - Source 13 - Request for Increase of Water Approved From The Village of Painted Post (#NY5001222)

Effective July 24, 2012, and pursuant to 18 CFR Section 806.22(f)(13), the Susquehanna River Basin Commission (Commission) hereby approves the request for an increase of water filed by SWEPI, LP (hereinafter "project sponsor"), for the use of water obtained from the Village of Painted Post (PWS #NY5001222), located in Painted Post, Steuben County, New York.

As a result of this approval, and pursuant to 18 CFR Section 806.22(f)(11), the project sponsor may utilize this source for natural gas development at any drilling pad site for which it has an effective Approval by Rule issued by the Commission, subject to any approval or authorization required by the Commission's (host) member state to utilize such source.

The project sponsor may obtain water from this source in a manner as described and in an amount not to exceed the amount established in the commitment letter submitted as part of the requested increase. The Village of Painted Post has amended its contract with SWEPI, LP to allow the purchase of water from 0.500 mgd up to 1.000 mgd.

The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from this source.

The project sponsor shall demonstrate to the Commission annually, by means of a commitment letter or other documentation acceptable to the Commission, that all sources approved under 18 CFR §806.22(f)(13) intend to continue to supply water to the project sponsor. The project sponsor shall notify the Commission, in writing, within 30 days of any termination of source water agreements. The project sponsor may increase the committed amount with proper notification to and approval from Commission staff prior to any consumptive water use. The Commission reserves the right to suspend or terminate this approval in the event of non-compliance of the source.

If you have any questions regarding the approval, please feel free to contact me at extension 227.

Thank you,
Glenda Miller

Tubridy, Stephanie L SEPCO-UAS/E/DEC

From: Densmore, Maris SEPCO-UAS/E/DEC
Sent: Monday, March 28, 2011 4:37 PM
To: Tubridy, Stephanie L SEPCO-UAS/E/DEC
Subject: FW: SWEPT, LP - Approved Source Application For The Use of Water Obtained From The Village of Painted Post - PWS #NY5001222 - Located in Painted Post, Steuben County, New York

From: Miller, Glenda [<mailto:gmiller@srbc.net>]
Sent: Monday, March 28, 2011 12:25 PM
To: Densmore, Maris SEPCO-UAS/E/DEC
Cc: Beauduy, Tom; Richenderfer, Jim; suweaver@state.pa.us; johamilton@state.pa.us; mhartle@state.pa.us; cdeluca@state.pa.us; dagustini@state.pa.us; djostenski@state.pa.us; jbuczynski@state.pa.us; jamekline@state.pa.us; mdholt@gw.dec.state.ny.us; pbfrecha@gw.dec.state.ny.us; lacollar@gw.dec.state.ny.us; bjfield@gw.state.ny.us; kfsanfor@gw.dec.state.ny.us; kplynch@gw.dec.state.ny.us
Subject: SWEPT, LP - Approved Source Application For The Use of Water Obtained From The Village of Painted Post - PWS #NY5001222 - Located in Painted Post, Steuben County, New York

Effective March 28, 2011, and pursuant to 18 CFR Section 806.22(f)(12)(ii), the Susquehanna River Basin Commission (Commission) hereby approves the source application filed by SWEPI, LP (hereinafter "project sponsor"), for the use of water obtained from the Village of Painted Post (PWS #NY5001222), located in Painted Post, Steuben County, New York.

As a result of this approval, and pursuant to 18 CFR Section 806.22(f)(11), the project sponsor may utilize this source for natural gas development at any drilling pad site for which it has an effective Approval by Rule issued by the Commission, subject to any approval or authorization required by the Commission's (host) member state to utilize such source.

The project sponsor may obtain water from this source in an amount not to exceed the amount established in the commitment letter submitted as part of its approval (500,000 gpd). The project sponsor may only increase the committed amount with proper notification to and prior approval from the Commission.

The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from this source.

The project sponsor shall demonstrate to the Commission annually, by means of a commitment letter or other documentation acceptable to the Commission, that all sources approved under 18 CFR §806.22(f)(12)(ii) intend to continue to supply water to the project sponsor. The project sponsor shall notify the Commission, in writing, within two (2) weeks of any termination of source water agreements. The project sponsor may increase the committed amount with proper notification to and approval from Commission staff prior to any consumptive water use.

If you have any questions regarding the approval, please feel free to contact me at extension 227 or Eric Roof at extension 209.

Thank you,
Glenda Miller



SWEPI LP

Shell Exploration & Production Company
190 Thorn Hill Road
Warrendale, PA. 15086

March 7, 2012

Susquehanna River Basin Commission
Attn: Glenda Miller
1721 North Front Street
Harrisburg, Pennsylvania 17102-2391

Re: Request to Increase Daily Volume from Approved (12)(ii) Water Source
NOI-2011-009, Village of Painted Post Public Water Supply

Dear Ms. Miller,

SWEPI LP (Shell) has an existing Source (12)(ii) approval from SRBC (NOI-2011-009) for 0.5 million gallons per day (MGD) from the Village of Painted Post municipal water system. Shell has amended its contract with Painted Post to allow purchase up to 1.0 MGD, which is reflected in the January 23, 2012 commitment letter (enclosed). It is Shell's understanding that the additional daily volume was previously allocated to a third party but is now being made available exclusively to Shell (see enclosed correspondence from Painted Post to SRBC).

As instructed, Shell is requesting approval from SRBC to obtain up to 1.0 MGD of water from Painted Post for natural gas development activities.

If you have any questions, need additional information, or want to discuss any aspect of this request, please do not hesitate to contact Steve Wright at (724) 831-9116 or via email at s.wright@shell.com.

Regards,

Andrew Richmond
Water Resources Team Lead

Enclosures: 2012 Painted Post commitment letter
Copy of March 7, 2012 Painted Post correspondence to SRBC



VILLAGE OF PAINTED POST

BOX 110
PAINTED POST, NY 14870-0110
(607) 962-4604

January 23, 2012
SWEPI LP
Attn: Andrew Richmond
190 Thorn Hill Road
Warrendale, PA 15086

Re: 2012 Annual Commitment Letter to Supply Water

Dear SWEPI LP:

This letter serves to confirm that the Village of Painted Post (the Village), PWS ID # NY5001222, is willing to supply fresh water from its public water supply system, on a bulk basis, for use by SWEPI LP gas well operations, in accordance with the terms described below.

The Village is willing to provide water from its public water supply to SWEPI LP in an amount up to 1.0 million gallons per day (mgd), as a bulk sale, when available as determined by the Village. SWEPI LP will arrange to collect water for its use at the following locations designated by the Village:

1. By rail car from a bulk loading facility located adjacent to West Chemung Street, Painted Post, NY at 42.162500°N latitude, 77.098333°W longitude.

By signing this letter, the Village confirms its agreement to these terms and conditions, confirms that it is duly authorized to provide the above-described bulk water sales, and acknowledges to the best of its knowledge that it is in compliance with regulating agencies and will continue to operate under the terms and conditions of its approvals.

The agreement is in effect from January 1, 2012 through December 31, 2012.

Acknowledged and agreed by Village of Painted Post:

Signed: 
Print: Larry E. Smith, Supt of Public Works
Title: Supt of Public Works
Telephone: 607-962-8724
Facsimile: 607-962-3208



VILLAGE OF PAINTED POST

BOX 110
 PAINTED POST, NY 14870-0110
 (607) 962-4604

March 7, 2012

Ms. Glenda Miller
 Susquehanna River Basin Commission
 1721 North Front Street
 Harrisburg, Pennsylvania 17102-2391

Re: Village of Painted Post Municipal Water Supply
 Reallocation of Water from Triana Energy to SWEPI LP

Dear Ms. Miller,

The Village of Painted Post (Painted Post) has entered into an agreement with SWEPI LP (Shell) to supply up to 1.0 million gallons per day (MGD) from Painted Post's municipal water system, which is an increase of 0.5 MGD over its 2011 commitment. The additional 0.5 MGD available to Shell was previously committed to Triana Energy. Painted Post has not committed and does not intend to commit any water to Triana Energy in 2012.

Thank you for your attention to this matter. If you have any questions or wish to discuss this matter further, please do not hesitate to contact the undersigned.

Larry Smith
 Superintendent of Public Works

cc: Andrew Richmond, SWEPI LP
 Steven Wright, SWEPI LP
 Munesh Patel, Harris Beach PLLC
 Ronald Yorio, Village Attorney
 Roswell Crozier, Jr., Mayor
 Rachelle King, Triana Energy



SWEPI LP

Shell Exploration & Production Company
 190 Thorn Hill Road
 Warrendale, PA 15086

January 23, 2012

Susquehanna River Basin Commission
 Attn: Glenda Miller
 1721 North Front Street
 Harrisburg PA 17102

Re: 2012 Annual Commitment Letters for SWEPI LP

Dear Ms. Miller:

Enclosed please find annual commitment letters from SWEPI LP's shared water sources approved under 18 CFR Section 806.22(f)(12)(i) and 12(ii). These include:

- Canton Borough Authority, Bradford Co., Canton, PA
- Town of Erwin Morningside Heights Water District, Painted Post, NY
- Hydro Recovery LP, Tioga Co., Blossburg, PA
- LHP Management, Inc., Fishing Creek, Clinton Co., Bald Eagle Twp., PA
- Talisman Energy USA Inc.
 - Susquehanna River - Thrush, Bradford Co., Sheshequin Twp., PA
 - Chemung River, Chemung Co., NY
 - Towanda Creek, Bradford Co., Frankline Twp., PA
- Ultra Resources, Inc.
 - Cowanesque River, Tioga Co., Deerfield Twp., PA
 - Pine Creek, Tioga Co., Pike Twp., PA
- PA American Water, Warren Co., Warren, PA
- Painted Post Village, Painted Post, NY

Each of these agreements is valid for the period January 1, 2012 through December 31, 2012.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions, concerns, or wish to discuss any aspect of this submittal. I can be reached via telephone at (724) 831-9116 and via electronic mail at s.wright@shell.com.

Regards,

Steve Wright
 Senior Environmental Engineer

cc: Jim Sewell, Shell
 Andrew Richmond, Shell



VILLAGE OF PAINTED POST

BOX 110
PAINTED POST, NY 14870-0110
(607) 962-4604

January 23, 2012
SWEPI LP
Attn: Andrew Richmond
190 Thorn Hill Road
Warrendale, PA 15086

Re: 2012 Annual Commitment Letter to Supply Water

Dear SWEPI LP:

This letter serves to confirm that the Village of Painted Post (the Village), PWS ID # NY5001222, is willing to supply fresh water from its public water supply system, on a bulk basis, for use by SWEPI LP gas well operations, in accordance with the terms described below.

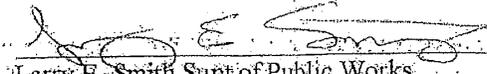
The Village is willing to provide water from its public water supply to SWEPI LP in an amount up to 1.0 million gallons per day (mgd), as a bulk sale, when available as determined by the Village. SWEPI LP will arrange to collect water for its use at the following locations designated by the Village:

1. By rail car from a bulk loading facility located adjacent to West Chemung Street, Painted Post, NY at 42.162500°N latitude, 77.098333°W longitude.

By signing this letter, the Village confirms its agreement to these terms and conditions, confirms that it is duly authorized to provide the above-described bulk water sales, and acknowledges to the best of its knowledge that it is in compliance with regulating agencies and will continue to operate under the terms and conditions of its approvals.

The agreement is in effect from January 1, 2012 through December 31, 2012.

Acknowledged and agreed by Village of Painted Post:

Signed: 
Print: Larry E. Smith Supt of Public Works
Title: Supt of Public Works
Telephone: 607-962-8724
Facsimile: 607-962-3208



SUSQUEHANNA RIVER BASIN COMMISSION

1721 North Front Street • Harrisburg, Pennsylvania 17102-2391
 Phone (717) 238-0423 • Fax (717) 238-2436
 Web <http://www.srbc.net>

Source (12)(ii) Application Pursuant to 18CFR §806.22(f)(12)(ii)

Source Name: PAINTED POST VILLAGE
 (NY5001222)

NOI #: NOI-2011-0093

Invoice #: 16593

1. Project Sponsor:

Co. Name: SWEPI LP
 Address: 190 Thorn Hill Road

City: Warrendale State: PA Zip: 15086
 Contact Person: Scott Blauvelt Title: Environmental & Regulatory Lead
 Telephone: 724-772-8600 Fax:
 Mobile: E-mail: Scott.Blauvelt@SHELL.com

2. Water Sources:

Public Water Supplies:

Permit Holder: PAINTED POST VILLAGE
 Address: PO Box 110

City: Painted Post State: NY Zip: 14870-0110
 Contact: Larry Smith Title: Supt of Public Works
 Telephone: 607-962-8724 Fax: 607-962-3208
 E-mail: ppdpw@stny.rr.com

Permitted System Capacity: 2.5000
 Current Average System Demand: 0.3150 mgd
 Historic Peak System Demand: 0.8370 mgd

Type of Water Being Supplied: Fresh Water
 Requested maximum daily amount transported from the public water supplier: 0.5000 mgd

State Permit Number(s): NY5001222
 SRBC Docket Number(s) (if applicable):

Description of Public Water Supply Connection:

The fill site is on property owned by the Village of Painted Post. Several water mains run through the site and are connected to the distribution system. Water can be obtained from a fire hydrant located on the site.
 Location:
 Latitude: N° 42.162500 Longitude: W° -77.098333

Type: Hydrant

Metered by: Supplier

Meter Make: Sensus

Model: DN150

Serial #: 00000000

3. Required Attachments:

Public Water Supplier letter or agreement(s)	
PP_LOI.pdf	View

Commitment Letter Start Date: 1/1/2011 Commitment Letter End Date: 12/31/2011

The project sponsor shall demonstrate to the Commission annually, by means of a commitment letter or other documentation acceptable to the Commission, that all sources approved under 18 CFR §806.22(f) 12 (i) and 12(ii) intend to continue to supply water to the project sponsor. The project sponsor shall notify the Commission, in writing, within two (2) weeks of any termination of source water agreements. The project sponsor can increase the committed amount with proper notification to and approval from Commission staff prior to any consumptive water use.

Map showing location of source.

Map showing location of source	
2011-01-31 PAINTED POST WW TOPO.pdf	View
2011-01-31 PAINTED POST WW AERIAL.pdf	View

4. Name and Signature of Project Sponsor:

The undersigned representative of the project sponsor certifies, under penalty of law (or perjury), as provided by 18 Pa. C. S. 4904, Section 210.45, of the New York Penal Law, Section 9-101 Maryland Crimes Code and 28 U.S.C. 1746, and attests that the information contained herein and all information accompanying this application is true and correct, and they are authorized to act as representatives of the project sponsor. The Applicant agrees and understands that if in the future there is a request to withdraw this application, it will result in the immediate termination of review of this application by the Commission. The Applicant shall remain responsible for payment of any invoiced fees associated with the Commission's processing of this application.

Project Sponsor Representative: Scott Blauvelt

Date: 3/18/2011

Signature: Robert Hendricks

Title: Regulatory Coordinator

Company: SWEP

5. Municipal, County, State:

As required by 18CFR §806.15, the project sponsor shall, no later than 10 days after submission of a Notice of Intent (NOI), notify each municipality in which the project is located, the county planning agency of each county in which the project is located, and appropriate state agency of the member state in which the project is located. If a drilling pad is in multiple municipalities or counties, a notice will need to be sent to each municipality and county.

All notices required under this section shall contain sufficient description of the project including location, date the NOI was submitted, the NOI number, the purpose of the project, and the Commission's mailing address, electronic mail address and phone number (please refer to the [Public Notice Guidelines](#) for sample language) as well as a printed copy of the submitted application. The project sponsor shall provide the Commission with a copy of the letter and a copy of the United States Postal Service certified mail return

Online Applications and Registrations

Page 3 of 3

receipts or another trackable delivery service acceptable to the Commission by uploading below:

a. Municipality: (Copy of Letter and Copy of Delivery Confirmation)

File Name	
Township return receipt - Painted Post.pdf	view
Township - Painted Post letter.pdf	view

b. County: (Copy of Letter and Copy of Delivery Confirmation)

File Name	
County - Painted Post letter.pdf	view
County return receipt - Painted Post.pdf	view

c. State Gas Well Permitting Office: (Copy of Letter and Copy of Delivery Confirmation)

File Name	
State return receipt - Painted Post.pdf	view
State - Painted Post letter.pdf	view

6. Publication of Notice:

As required by 18CFR §806.15, the project sponsor shall, no later than 10 days after submission of a Notice of Intent (NOI) to the Commission, publish a notice in a newspaper of general circulation in the location of the project.

The notice shall contain sufficient description of the project including location, date the NOI was submitted, the NOI number, the purpose of the project, and the Commission's mailing address, electronic mail address and phone number (please refer to the [Public Notice Guidelines](#) for sample language).

The project sponsor shall provide the Commission with the name of the newspaper in the location of the project and the date of publication:

Name of Newspaper: The Leader Date of Publication: 3/16/2011

7. Name and Signature of Project Sponsor:

The undersigned representative of the project sponsor certifies, under penalty of law (or perjury), as provided by 18 Pa. C. S. 4904, Section 210.45, of the New York Penal Law, Section 9-101 Maryland Crimes Code and 28 U.S.C. 1746, and attests that the information contained herein and all information accompanying this application is true and correct, and they are authorized to act as representatives of the project sponsor.

Project Sponsor Representative: Robert Hendricks Date: 3/17/2011

Signature: Robert Hendricks Title: Regulatory Coordinator
Company: SWEPL, LP

03-10-11;09:21AM:

1607-962-3208

2/ 2



VILLAGE OF PAINTED POST
BOX 110
PAINTED POST, NY 14870-0110
(607) 962-4604

February 1, 2011

Re: Village of Painted Post, Steuben County, NY
Bulk Water Supply

This letter serves to confirm that the Village of Painted Post, PWS ID # NY5001222, is willing to supply water from its public water supply system, on a bulk basis, for use by SWEPI LP for gas well operations, in accordance with the terms described below.

The Village of Painted Post operates a public water system in Steuben County, NY, which has a total capacity to supply up to 2.5 million gallons per day (mgd). The current average daily demand for the Village of Painted Post water system is approximately .315 mgd and peak day demand is .837 mgd. The Village of Painted Post is willing to provide municipal water to SWEPI LP in an amount up to .50 mgd, as a bulk sale, during the period from January 1, 2011 through December 31, 2011. It is understood that such amounts are not a commitment to reserve water, and that such amounts are subject to curtailment in case of drought restrictions or other unforeseen operational conditions that require the Village of Painted Post to suspend or limit bulk water sales. SWEPI LP will arrange to collect water for its use by truck or railroad at the filling/metering station, located at Connection Location(s) Latitude: N° 42-9'-45" W° 77-5'-54" as designated by the Village of Painted Post, during normal office hours or at other previously agreed-to times. This withdrawal will be metered by the Water Supplier using Meter Make: Sensus, Model 6" -- DN160 Compound meter.

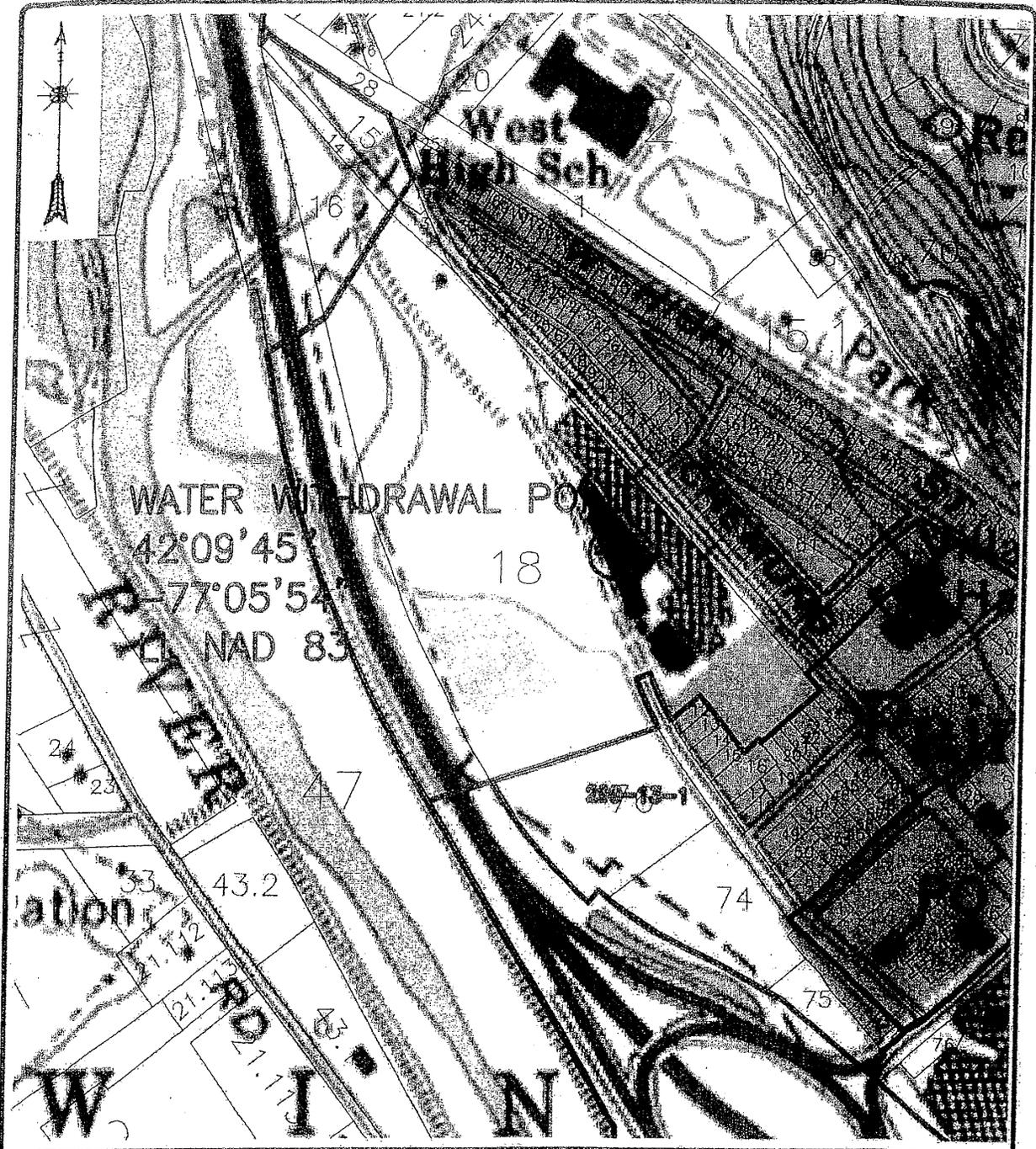
The Village of Painted Post agrees to sell SWEPI LP for \$14.25/1,000 gallons.

By signing this letter, the Village of Painted Post confirms its agreement to these terms and conditions, confirms that it is duly authorized to provide the above-described bulk water sales, and acknowledges to the best of its knowledge that it is in compliance with regulating agencies and will continue to operate under the terms and conditions of its approvals.

Acknowledged and agreed by the Village of Painted Post:

Signed:
Print: Larry Smith
Company: Village of Painted Post
Title: Supt. of Public Works

Signed:
Print: Robert Hendricks
Company: SWEPI LP
Title: Regulatory Coordinator



- LEGEND**
- STATE LINES
 - COUNTY LINES
 - TOWNSHIP LINES
 - TAX SHEETS
 - TAX PARCELS
 - WATER WITHDRAWAL POINT

EAST
RESOURCES INC.

1 INCH = 500 FEET.

**PAINTED POST
DEVELOPMENT
WATER WITHDRAWAL
POINT
STEBEN COUNTY, NY**

Located: Twn: ERWIN	Co: STEUBEN	State: NY
Scale: 1"=500'	Dwn By: JCHUSANO	Dwn Date: 1/31/11
File: 2011-01-31 PAINTED_POST_WW.DWG		



- LEGEND**
- STATE LINES
 - COUNTY LINES
 - TOWNSHIP LINES
 - TAX SHEETS
 - TAX PARCELS
 - WATER WITHDRAWAL POINT

1 INCH = 500 FEET.

**PAINTED POST DEVELOPMENT
 WATER WITHDRAWAL POINT
 STEUBEN COUNTY, NY**

Located: Twn: ERWIN	Co: STEUBEN	State: NY
Scale: 1"=500'	Dwn By: JCHIUANO	Dwn Date: 1/31/11
File: 2011-01-31 PAINTED POST.WW.DWG		



MAILED
2/11/11 UPS SVF

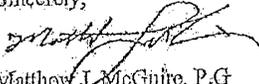
Town of Erwin, Town Hall
117 West Water Street
Painted Post, NY 14870

Re: Notice of Intent (NOI-2011-0093) for Consumptive Use of water from Painted Post Village,
located in Painted Post, Steuben County, New York

Notice is hereby given that on February 23, 2011, SWEPI LP, has filed a Notice of Intent (NOI) (NOI-2011-0093) with the Susquehanna River Basin Commission (SRBC) seeking to consumptively use water obtained from Painted Post Village, located in Painted Post, Steuben County, New York pursuant to 18 CFR Section 806.22(d)(ii). This water will be used to support the drilling and development of natural gas well(s) on drilling pad(s) located within the Susquehanna River Basin. The Approved Source List for Natural Gas Development can be found at www.srbc.net.

Comments referring to the NOI number above should be submitted to the attention of Ms. Paula Ballaron, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, telephone: 717-238-0423, at ext. 222, or Eric Roof at ext. 209, fax: 717-909-0468, email: pballaron@srbc.net or eroof@srbc.net. Please include the above NOI number on any correspondence.

Sincerely,


Matthew J. McGuire, P.G.
Regional Regulatory Coordinator
SWEPI LP

Enclosures: 1) Site Location Map
2) UPS Tracking Number 1Z6FA1120396599404

Tubridy, Stephanie L SEPCO-UAS/E/DEC

From: UPS Quantum View [auto-notify@ups.com]
Sent: Tuesday, March 15, 2011 12:27 PM
To: Tubridy, Stephanie L SEPCO-UAS/E/DEC
Subject: UPS Delivery Notification, Tracking Number 1Z6FA1120396599404

***Do not reply to this e-mail, UPS and SWEPI LP will not receive your reply.

At the request of SWEPI LP, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1Z6FA1120396599404
Delivery Date / Time: 15-March-2011 / 11:06 AM

Delivery Location: RECEIVER
Signed by: FISHBR

Shipment Detail

Ship To:
Town of Brwin
117 W WATER ST
PAINTED POST
NY
14870
US

Number of Packages: 1
UPS Service: GROUND
Weight: 1.0 LBS
Reference Number 1: Village of Painted Post

Discover more about UPS:
Visit www.ups.com



MAILED
3/11/11 10:58 AM

Steuben County Planning Department
3 East Pulteney Square
Bath, NY 14810

Re: Notice of Intent (NOI-2011-0093) for Consumptive Use of water from Painted Post Village,
located in Painted Post, Steuben County, New York

Notice is hereby given that on February 23, 2011, SWEPI LP, has filed a Notice of Intent (NOI) (NOI-2011-0093) with the Susquehanna River Basin Commission (SRBC) seeking to consumptively use water obtained from Painted Post Village, located in Painted Post, Steuben County, New York pursuant to 18 CFR Section 806.22(f)(ii). This water will be used to support the drilling and development of natural gas well(s) on drilling pad(s) located within the Susquehanna River Basin. The Approved Source List for Natural Gas Development can be found at www.srbc.net.

Comments referring to the NOI number above should be submitted to the attention of Ms. Paula Ballaron, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, telephone: 717-238-0423, at ext. 222, or Eric Roof at ext. 209, fax: 717-909-0468, email: pballaron@srbc.net or eroof@srbc.net. Please include the above NOI number on any correspondence.

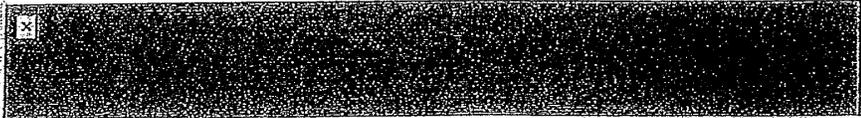
Sincerely,

Matthew J. McGuire, P.G.
Regional Regulatory Coordinator
SWEPI LP

Enclosures: 1) Site Location Map
2) UPS Tracking Number 1Z6FA1120397942192

Tubridy, Stephanie L SEPCO-UAS/E/DEC

From: UPS Quantum View [auto-notify@ups.com]
Sent: Tuesday, March 15, 2011 10:31 AM
To: Tubridy, Stephanie L SEPCO-UAS/E/DEC
Subject: UPS Delivery Notification, Tracking Number 1Z6FA1120397942192



***Do not reply to this e-mail. UPS and SWEPI LP will not receive your reply.

At the request of SWEPI LP, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1Z6FA1120397942192
Delivery Date / Time: 15-March-2011 / 9:53 AM

Delivery Location: RECEIVER
Signed by: MORSE

Shipment Detail

Ship To:
Planning Department
Steuben County
3 PULTENEY SQ E
BATH
NY
14810
US

Number of Packages: 1
UPS Service: GROUND
Weight: 1.0 LBS
Reference Number 1: Village of Painted Post

Discover more about UPS:



MAILED
3/11/11 UPS 805

Mr. Dixon Rollins
Regional Water Engineer
NYS DEC
6274 Avon-Lima Road
Avon, NY 14414-9519

Re: Notice of Intent (NOI-2011-0093) for Consumptive Use of water from Painted Post Village,
located in Painted Post, Steuben County, New York

Notice is hereby given that on February 23, 2011, SWEPI LP. has filed a Notice of Intent (NOI) (NOI-2011-0093) with the Susquehanna River Basin Commission (SRBC) seeking to consumptively use water obtained from Painted Post Village, located in Painted Post, Steuben County, New York pursuant to 18 CFR Section 806.22(f)(ii). This water will be used to support the drilling and development of natural gas well(s) on drilling pad(s) located within the Susquehanna River Basin. The Approved Source List for Natural Gas Development can be found at www.srbc.net.

Comments referring to the NOI number above should be submitted to the attention of Ms. Paula Ballaron, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, telephone: 717-238-0423, at ext. 222, or Eric Roof at ext. 209, fax: 717-909-0468, email: pballaron@srbc.net or eroof@srbc.net Please include the above NOI number on any correspondence.

Sincerely,

Matthew J. McGuire, P.G.

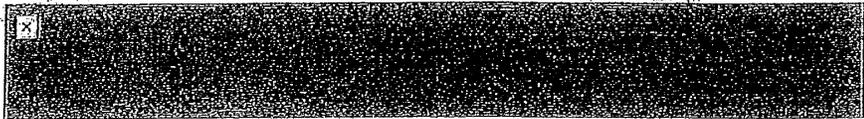
Regional Regulatory Coordinator

SWEPI LP

Enclosures: 1) Site Location Map
2) UPS Tracking Number 1Z6FA1120395615389

Tubridy, Stephanie L SEPCO-UAS/E/DEC

From: UPS Quantum View [auto-notify@ups.com]
Sent: Tuesday, March 15, 2011 11:26 AM
To: Tubridy, Stephanie L SEPCO-UAS/E/DEC
Subject: UPS Delivery Notification, Tracking Number 1Z6FA1120395615389



***Do not reply to this e-mail. UPS and SWEPI LP will not receive your reply.

At the request of SWEPI LP, this notice is to confirm that the following shipment has been delivered.

Important Delivery Information

Tracking Number: 1Z6FA1120395615389
Delivery Date / Time: 15-March-2011 / 10:23 AM

Delivery Location: FRONT DESK
Signed by: WAKEFIELD

Shipment Detail

Ship To:
Mr. Dixon Rollins
NYS DEC
6274 STATE ROUTE 5 AND 20
AVON
NY
14414
US

Number of Packages: 1
UPS Service: GROUND
Weight: 1.0 LBS
Reference Number 1: Village of Painted Post

Discover more about UPS:

**AFFIDAVIT OF WILLIAM R. GOUGH, IN FURTHER SUPPORT OF RESPONDENTS'
MOTIONS AND IN REPLY TO PETITIONERS' OPPOSITION PAPERS, SWORN TO ON
FEBRUARY 21, 2013 [620-625]**

1093788

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

AFFIDAVIT IN FURTHER
SUPPORT OF
RESPONDENTS' MOTIONS
AND IN REPLY TO
PETITIONERS' OPPOSITION
PAPERS

For a Judgment under Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

Index No.: 2012-0810 CV

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

STATE OF PENNSYLVANIA)
COUNTY OF CRAWFORD) ss.:

WILLIAM R. GOUGH, being duly sworn deposes and says:

1. As set forth in more detail in my affidavit dated August 1, 2012, I am a professional geologist, licensed in Pennsylvania and I have been employed by Moody & Associates, Inc. since 1973 as a consulting geologist. The statements made in this affidavit are based on my review of pertinent documents as referred to herein, and based on my experience, as well as my professional training and as indicated in my previous affidavits, including my experience and knowledge of the matters addressed herein. This affidavit is submitted in further support of the motions filed on behalf of Respondents, the Village of Painted Post ("the Village") Painted Post Development, LLC ("Painted Post Development") and SWEPI, LP ("SWEPI") (collectively they may be referred to as

“the Respondents”). I am submitting this affidavit to set the record straight in response to numerous incorrect statements made in affidavits submitted by Petitioners in this matter.

2. In particular, this affidavit responds to the affidavits of Paul Rubin, who states that he is a geologist and hydrogeologist. Mr. Rubin is particularly critical of affidavits submitted by myself and others in that he alleges the Village has no data to support its determination of no significant adverse impact associated with the operation of the Transloading Facility and its approval of the Surplus Water Agreement. In fact, it appears from his affidavit that Mr. Rubin was apparently not provided all of the pleadings or the administrative record in this matter, because as set forth in detail in the affidavits of Larry Smith, dated August 1, 2012 as well as more recently dated January 9, 2013, the data relied upon by the Village to demonstrate that the Village water system, including the Village wells, have adequate capacity to supply the water necessary for the Surplus Water Agreement is based upon decades of production data. See affidavit of Larry Smith dated August 1, 2012 (referencing production data reviewed), as well as the affidavit of Larry Smith dated January 9, 2013 (referencing the documents he reviewed concerning production capacity which documents were made available to the Sierra Club in response to a FOIL in June of 2012).

A. Petitioners Ignore the Production Data Which Demonstrates the Village Wells Have Significantly More than Sufficient Capacity to Supply the Water at Issue

3. Indeed, Mr. Rubin’s affidavit essentially completely disregards, and appears to purposely avoid addressing the pertinent facts in this matter. Though Petitioners essentially failed to acknowledge it, the Village wells at issue have been properly permitted by the State of New York for decades, and the withdrawals associated with the sales of surplus water, including how the water is to be used, have been specifically authorized by the Susquehanna River Basin Commission (“SRBC”). See the approvals granted by SRBC as reflected in correspondence attached to the Administrative Record at Exhibit “12” filed by the Village on August 1, 2012.

4. In sum, Petitioners' claims that additional testing should have been undertaken to determine if there was adequate capacity in the Village wells to supply the surplus water at issue are without any basis, as the wells at issue have been permitted by the State of New York, and the withdrawals at issue have been approved by the agency required to look after the withdrawals from the aquifer at issue within the Susquehanna River Basin, specifically, the SRBC. Further, to the extent Petitioners contend that the Village was required to address potential impacts of the use of the surplus water sold to SWEPI including use of it in another state, there is no regulatory or other basis cited that would authorize such an extraordinary review. Moreover, the approvals issued by SRBC concerning the surplus water to be sold contain measures required to be followed by SWEPI concerning such water use, including but not limited to, relegating the use of the surplus water to those natural gas drilling sites approved by SRBC (and subject to other conditions as applicable in member states where such water is used), and monitoring requirements whereby the amount of surplus water obtained by SWEPI must be documented on a daily basis and other requirements. See the correspondence of SRBC's Glenda Miller dated March 28, 2011 attached hereto as part of Exhibit "A," documents provided to the Court with the affidavit of Larry Smith dated January 9, 2013).

5. In fact, the data upon which the SRBC was based (at least in part) is the standard for determining the capacity of wells – production data which goes back decades. Indeed, professional geologists and hydrogeologists would commonly acknowledge that the standard for determining well capacity is production data, and as set forth in the affidavit of Larry Smith dated January 9, 2013, this data was specifically provided to SRBC when SRBC was determining whether to issue approvals for the withdrawal of the water at issue.

B. There Are Measures in Place for the Monitoring of Water Withdrawn Pursuant to the SRBC Approval

6. The affidavits submitted by Petitioners including those submitted by Mr. Rubin spend a great deal of time warning of the potential negative consequences of withdrawing water from the Corning Aquifer through the Village wells, and claim that adequate protections are not in place to prevent over-use of such aquifer. There is no basis for Petitioners' claims that adequate protections do not exist and in fact those claims are contradicted by the facts in this matter. The uncontroverted facts are that SRBC has authorized the withdrawal at issue, and it found that the Village wells have more than adequate production to supply the surplus water as contemplated under the agreement with SWEPI. Specifically, Ms. Paula Ballaron Manager, Policy Implementation & Outreach for the Susquehanna River Basin Commission states in pertinent part that the SRBC's approval of the sale of water specifically found as follows:

- There is sufficient excess capacity to support the requested bulk sale;
- There is an agreement in place between the natural gas company and the public water supplier;
- The public water supply system is in compliance with permits (reporting needs requirements, allocated quantities not exceeded, water loss in the system is within acceptable range, etc.);
- The water is for bulk and it will come from the existing system and not require a modification under state regulations;
- The connections for the bulk sale will be fully metered and quantities monitored; and

See the correspondence of Paula Ballaron, P.G. attached as Exhibit "12" to the Administrative Record (this approval was subsequently transferred by SRBC to SWEPI).

7. Ms. Ballaron goes on to state that the contract at issue specifically provides that any surplus water sold to SWEPI is based upon availability of such water. See also the e-mail correspondence from Larry Smith, Village of Painted Post Superintendent of Public Works to Glenda Miller, SRBC, confirming that SRBC had agreed to transfer the permitted withdrawal associated with Triana Energy's application to SWEPI LP, as well as the April 15, 2011 correspondence from Glenda Miller to Larry Smith confirming that Shell is approved to use 500,000 gallons of water from the Village of Painted Post supply for natural gas exploration submitted to the Court with the affidavit of Larry Smith dated January 9, 2013 (an extra copy of the January 9, 2013 Smith Affidavit as well as the correspondence provided to the Court with the January 9, 2013 Smith Affidavit is attached hereto as Exhibit "A"). In addition, based upon my previous experience, as well as the approvals here, SRBC specifically monitors the withdrawal of water within the Susquehanna River Basin, and in the event SRBC determines that there is not adequate capacity being produced, SRBC reserves the right to direct that any such withdrawals cease.

C. There is No Basis To Claims by Petitioners Claims that the Production of Water From the Village Wells Has Had any Impact on Water from the Aquifer

8. I also note that there are a number of references in affidavits submitted by the Petitioners to the testing of tap water using a testing kit and petitioners claim that based on results of such sampling, they believe the sales of surplus water may be affecting the aquifer. However, a review of the data provided show such sampling provides no useful information. Preliminarily, there is no baseline provided by the Petitioners for the sample data associated with the alleged testing; without a baseline established from earlier test results prior to 2012 under properly controlled circumstances, there is no basis to determine whether there has been any change in the nature of the water, let alone determine what may be causing any changes. Further, there is no verification that proper procedures were followed to undertake such testing or that a properly certified laboratory was

to conduct the analysis, and there is no chain of custody information to indicate that the samples taken were collected and held in a manner which would insure the samples were not contaminated.

9. Further, it is worth noting that petitioners themselves acknowledge that the Village water has always been "hard," meaning that it has higher levels of minerals and metals. Yet, Petitioners claim that based upon testing undertaken over the last year that it is likely that the level of metals and minerals has increased in the Village water supply. Yet there is no basis for such conclusion, let alone has any basis been advanced that would support speculation that any additional hardness to the water have resulted from the production of water from the aquifer.

William R. Gough

WILLIAM R. GOUGH

Sworn to before me
this 21 day of February, 2013.

Kelly Keener

Notary Public

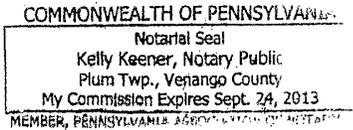


EXHIBIT A –
AFFIDAVIT OF LARRY E. SMITH, SUBMITTED AT THE REQUEST
OF JUDGE RENZI CONCERNING DISCOVERY ISSUES,
SWORN TO JANUARY 9, 2013
(REPRODUCED HEREIN AT PP. 557-559)

EXHIBIT –
JANUARY 9, 2013 AFF PRODUCTION DATA
(REPRODUCED HEREIN AT PP. 560-598)

EXHIBIT –
JANUARY 10, 2013 LETTER FROM JOSEPH D. PICCIOTTI
TO JUDGE RENZI, WITH ENCLOSURES
(REPRODUCED HEREIN AT PP. 599-619)

**AFFIDAVIT OF ROSWELL CROZIER, JR., IN FURTHER SUPPORT OF RESPONDENTS'
MOTIONS AND IN REPLY TO PETITIONERS' OPPOSITION PAPERS, SWORN TO ON
FEBRUARY 21, 2013 [627-629]**

1983424

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

REPLY AFFIDAVIT IN
FURTHER SUPPORT OF
RESPONDENTS' MOTION
TO DISMISS AND/OR FOR
SUMMARY JUDGMENT
AND IN OPPOSITION TO
THE PETITION

2012-0810CV
Index No.: H75-12

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

Roswell Crozier, Jr., being duly sworn deposes and says:

1. As stated in my previous affidavit submitted in this matter, I am the Mayor of the Village of Painted Post ("the Village") and a member of the Board of Trustees for the Village (the Trustees and Mayor will be referred to as the "Village Board" and sometimes the Village Board and the Village will be collectively referred to as the "Village"). The statements in this affidavit as in my previous one are based upon my personal knowledge, including based upon my review of pertinent documents including those identified in this affidavit and in my previous one as well as those which are provided as part of the Administrative Record in this matter.

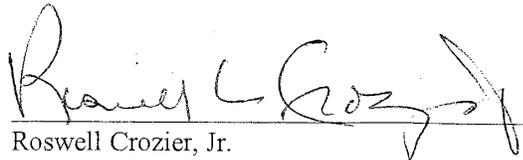
2. I submit this affidavit to clarify the record in this proceeding and to respond to several claims concerning the issues that the Village faced in September regarding certain freight rail operations which occurred during the nighttime.

3. As indicated in the affidavits of a few Petitioners, some Village residents did hear during nighttime hours rail operations including train safety whistles which occurred after 10:00 p.m. in the evening. The noise from these operations occurred over a few week period when the operations associated with the transloading facility (the "Transloading Facility") began with the sale of surplus water under the Surplus Agreement. It is important to note that the time for the movement of the train cars associated with the movement of surplus water by the Wellsboro and Corning Railroad was dictated to it by another rail company Norfolk Southern, with which neither Wellsboro and Corning, nor the Village (nor Painted Post Development), nor SWEPI, LP had any contractual relationship. In short, I am informed under applicable law, the time when a train may use a segment of track is solely within the discretion of the company which owns the rail line at issue. The rail line over which a portion of the operations to move water from the Transloading Facility to SWEPI's facilities in Pennsylvania takes place over a line which is not owned by the Wellsboro and Corning Railroad, but rather the other rail company, Norfolk Southern. As such, the other rail company determines when the rail line is available for use and at the beginning of September those times were after 9:00 in the evening.

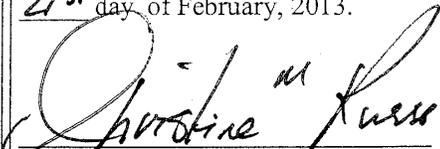
4. As a result of concerns raised by myself and Village residents, the other rail company involved was contacted by me on behalf of the Village residents and it made alternative arrangements so that operations associated the movement of the surplus water would not occur in the evening hours, but rather would occur during the day. It is important to note that under no circumstances did the Village, Painted Post Development, SWEPI or Wellsboro and Corning Railroad have any control over the noise issues of which some residents complained. In short, federal and state law require that trains operating use safety whistles and as such, we were not in a position to prevent such whistles from being utilized, which I understand was the noise which caused the most concern. Nor were the Village, Painted Post Development, SWEPI or Wellsboro and

Corning Railroad able to control when those rail movements occurred. Nevertheless, in my role as Mayor, I was able to insure that the movements occurred at a time when the Village residents who had expressed concern would not be disturbed.

5. I would also add that in the future, Village representatives, including myself as Mayor, would take whatever steps can be taken to address the concerns of Village residents, including from rail operations. That having been said, because of federal and state law applicable to rail operations, such noise, etc. could occur from other rail operations having nothing to do with the sale of surplus water. In any event, I would intervene in the future to attempt to prevent any such issues if Village residents were being impacted.


Roswell Crozier, Jr.

Sworn to before me this
21st day of February, 2013.


Notary Public

CHRISTINE M. RUSSO
NOTARY PUBLIC NO. 01RU6111363
STEUBEN COUNTY, STATE OF NEW YORK
MY COMMISSION EXPIRES 6/7/20 16

**AFFIDAVIT OF JOSEPH D. PICCIOTTI, IN FURTHER SUPPORT OF RESPONDENTS'
MOTIONS AND IN REPLY TO PETITIONERS' OPPOSITION PAPERS, SWORN TO ON
FEBRUARY 22, 2013 [630-631]**

19837474

SUPREME COURT
STATE OF NEW YORK COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN
MARVIN; THERESE FINNERAN; MICHAEL
FINNERAN; VIRGINIA HAUFF; and JEAN WOSINKSI,

Petitioners,

For a Judgment under Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN
FURTHER SUPPORT OF
RESPONDENTS' MOTIONS
AND REPLY TO
PETITIONERS' OPPOSITION
PAPERS

Index No.: 1175-12

2012-0810 CV

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

Joseph D. Picciotti, being duly sworn deposes and says:

1. I am a lawyer employed with the firm of Harris Beach PLLC, counsel for Respondents Village of Painted Post, Painted Post Development, LLC and SWEPI, LP (hereinafter each of the foregoing may be referred to collectively as "Respondents"). I submit this affidavit in further support of Respondents' motions for summary judgment and/or to dismiss of the Petition.

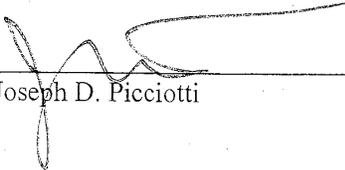
This affidavit is based upon my personal knowledge of the pleadings and proceedings in this matter.

2. As set forth in the Memorandum of Law submitted herewith dated February 22, 2013 (hereinafter, the "Reply Memorandum"), as well as Respondents' Memorandum of Law filed on August 1, 2012, this matter is moot because construction of the Transloading Facility has been completed and because, due to *laches*, Petitioners have failed to pursue their remedies with diligence. As discussed in the Reply Memorandum, Petitioners' counsel's own website contains a

section entitled "Media Coverage of Painted Post Withdrawals and Related Issues" and that section of her website identifies various newspaper articles and other items dating back to April 17, 2011, including articles discussing the Susquehanna River Basin Commission approvals associated with this matter and discussing the Village's plans to construct the Transloading Facility. (Attached hereto as Exhibit "A" is a copy of a page from that website).

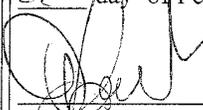
3. For the reasons set forth in detail in the Reply Memorandum submitted herewith, both the Organizational and Individual Petitioners have failed to demonstrate that they have standing in this matter because they have not alleged injury different from the public at large. In addition, I note that some of the Petitioners claim to live within the Village of Painted Post and also claim to live in close proximity to the Transloading Facility. Attached as Exhibit "B" are printouts of Google map directions showing the distances from the homes of Petitioners, John Marvin, Virginia Hauff and Therese and Michael Finneran, to the Transloading Facility. We provide this information to identify the actual distances between those Petitioners and the Transloading Facility.

4. For the reasons set forth in the Affidavits and Memoranda of Law submitted to this Court on behalf of Respondents, including those submitted on February 22, 2013, as well as Respondents' Notice of Motion and papers submitted on August 1, 2012, this Court should grant in all respects the motion to dismiss and/or for summary judgment in this matter.



Joseph D. Picciotti

Sworn to before me this
22 day of February, 2013.



Notary Public

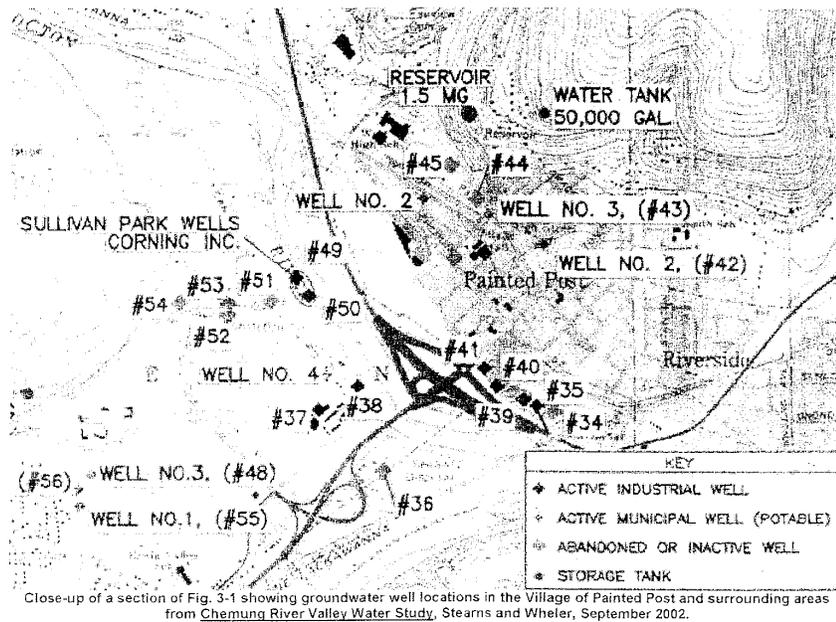
DOUGLAS F. KALETA
Notary Public, State of New York
No. 01KA6058487
Qualified in Monroe County
Commission Expires May 14, 2015

EXHIBIT A – PRINT OUT OF WEBSITE [632-633]

Painted Post Water Withdrawal Materials

Page 1 of 7

Law Office of Rachel Treichler



Painted Post Water Withdrawal Materials

Court Filings

[Verified petition and order to show cause in Sierra Club et al., v. Village of Painted Post, et al.](#), filed June 25, 2012, Index No. 2012-0810.

[Verified answer and motion to dismiss and/or for summary judgment with supporting documents](#), filed Aug. 3, 2012, by respondents Village of Painted Post, Painted Post Development LLC and SWEPI

[Verified answer](#), filed Sept. 10, 2012, by respondent Wellsboro & Corning Railroad

[Notice of motion to dismiss and/or for summary judgment and memorandum of law](#), filed October 10, 2012, by respondent Wellsboro & Corning Railroad.

[Memorandum of law and supporting affidavits](#), filed January 28, 2013, by petitioners.

Click here for [Materials on the Hydrogeology of the Corning Aquifer](#)

Media Coverage of Painted Post Withdrawals and Related Issues

- 02/10/13 [Painted Post Board to Discuss What's Next \(PDF\)](#), Jeffrey Smith, *Corning Leader*, p. A1.
- 01/30/13 [Hearing set for Painted Post water lawsuit](#), Derrick Ek, *Corning Leader*, p. A1.
- 12/26/12 [Water shortage stopping growth in Tioga County](#), Cheryl R. Clarke, *Williamsport Sun-Gazette*
- 12/13/12 [Village's Future Debated at Packed Forum](#), Derrick Ek, *Corning Leader*, p. A1.
- 10/05/12 [Painted Post lawsuit moves to different court](#), Derrick Ek, *Corning Leader*
- 10/05/12 [Trains no longer running at night. Painted Post residents say](#), Jeffrey Smith, *Corning*

- Leader*
- 9/15/12 Painted Post fracking rally: Residents, activists join forces, Jeffrey Smith, *Corning Leader*
- 09/11/12 Residents Weary of Night Trains (PDF), Jeffrey Smith, *Corning Leader*
- 09/11/12 Residents Weary of Night Trains (PDF), Jeffrey Smith, *Corning Leader*
- 09/10/12 Board Eyes Uses for Water Sales Funds (PDF), Jeffrey Smith, *Corning Leader*
- 08/26/12 Painted Post Water Sales: Late Trains Rattle Residents (PDF), Jeffrey Smith, *Corning Leader*
- 07/23/12 Hearing on Water Sales Lawsuit Delayed, Derreck Ek, *Corning Leader*
- 07/12/12 Stop Painted Post Water Sales? It's Not Likely (PDF), Bob Rolfe, *Corning Leader*
- 07/10/12 Painted Post faces lawsuit over water project: Sierra Club, others want to village to conduct new environmental review, Ray Finger, *Elmira Star-Gazette*
- 07/10/12 Painted Post hires attorney in water suit, Jeffrey Smith, *Corning Leader*
- 07/06/12 Painted Post Water Lawsuit, Walter Smith-Randolph, *WENY TV*
- 07/06/12 Lawsuit Filed Against PP Bulk Water Sale Project (PDF), Derrick Ek, *Corning Leader*
- 07/05/12 Lawsuit Filed Over Water Exports to Gas Industry, Stacey Minchin, *WETM TV*
- 06/14/12 Water Station on Track to Be Complete by End of July, Jeffrey Smith (PDF), *Corning Leader*
- 06/11/12 Water Sale Cause for Concern (PDF), Mary Finneran, Letter to the Editor, *Corning Leader*
- 06/07/12 Water Sales to Fracking Industry Stopped in Southern Ohio, Buckeye Forest Council, *ecowatch.org*
- 06/04/12 Drillers Seek Permits for River Water (PDF), Leader Staff, *Corning Leader*
- 06/02/12 Removal of billions of gallons of water from the earth's surface arouses new opposition to fracking, Bob Downing, *Akron Beacon Journal*
- 05/04/12 The Real Cost of Water Sales (PDF), David Peris, Letter to the Editor, *Corning Leader*
- 05/03/12 Work Under Way on Water Loading Facility (PDF), Jeffrey Smith, *Corning Leader*
- 05/01/12 Village of Painted Post could earn \$4M selling water, Jeffrey Smith, *Corning Leader*
- 04/30/12 How much is Painted Post water worth? Officials aren't telling, but expert says public has right to know, Jeffrey Smith, *Corning Leader*
- 03/26/12 Village of Painted Post Set to Sell Water, YNN
- 03/24/12 PP to sell water for drilling, *Corning Leader*
- 03/17/12 Municipal water export: Whose water? Whose rights?, Rachel Treichler and Mark Schlechter, *Steuben Courier Advocate*
- 03/12/12 For sale: Municipal water rights, Bobby Magill, *Fort Collins Coloradoan*
- 02/23/12 Painted Post to Sell Surplus Water, Bobby Brooks, *WETM TV*
- 02/08/12 Proposed Painted Post Water Loading Site Will Try To "Blend In", Chris Hush, *WETM TV*
- 02/07/12 Painted Post facility may break ground in March, Jeffrey Smith, *Corning Leader*
- 01/31/12 Painted Post water deal moves forward: Village could sell 1 million gallons daily, Jeffrey Smith, *Corning Leader*
- 01/27/12 Don't Let Drillers Tap our Water (PDF), Jean Wosinski, Guest View, *Corning Leader*, p. 4A
- 09/21/11 Local officials briefed on water withdrawals, gas drilling issues, Derrick Ek, *Corning Leader*
- 09/15/11 Plan to Sell Water Moves Ahead (PDF), Jeffrey Smith, *Corning Leader*, p. 1A
- 09/14/11 Selling City Water a Good Idea (PDF), Editorial, *Corning Leader*, p. 4A
- 09/12/11 City in Talks to Sell Water for Drilling (PDF), Jeffrey Smith, *Corning Leader*, p. 2A
- 08/05/11 Water Sale Plan Raises Concerns (PDF), Frances Mikolajczak, Letter to the Editor, *Corning Leader*
- 07/29/11 What Are Legislators Thinking? (PDF), Virginia Wright, Letter to the Editor, *Corning Leader*
- 07/27/11 Painted Post closes in on deal to sell water for fracking, *Corning Leader*
- 07/12/11 Painted Post Fracking Water Deal Progresses (PDF), Jeffrey Smith, *Corning Leader*, p. 2A
- 06/29/11 Lawyer Hired for PP Depot: Water Facility Would Supply Gas Drillers (PDF), Jeffrey Smith, *Corning Leader*, p. 1A
- 06/23/11 PP to Mull Proposal for Water Depot (PDF), Jeffrey Smith, *Corning Leader*
- 05/16/11 Questions about Selling Water (PDF), Frank Anastasio, Letter to the Editor, *Corning Leader*
- 05/10/11 Selling water a good idea for city, by Leader Staff, *Corning Leader*
- 05/08/11 City Considers Selling Water: News of Painted Post Plan Has Corning Officials Interested (PDF), *Corning Leader*, p. 1A
- 04/25/11 Water would be shipped to Pa. for use in fracking, Jeff Murray, *Binghamton Press and Sun Bulletin*
- 04/21/11 Let Your Voice Be Heard Now (PDF), *Corning Leader* editorial, p. 4A.
- 04/17/11 Water station could help Painted Post cash in on fracking, Derrick Ek, *Corning Leader*

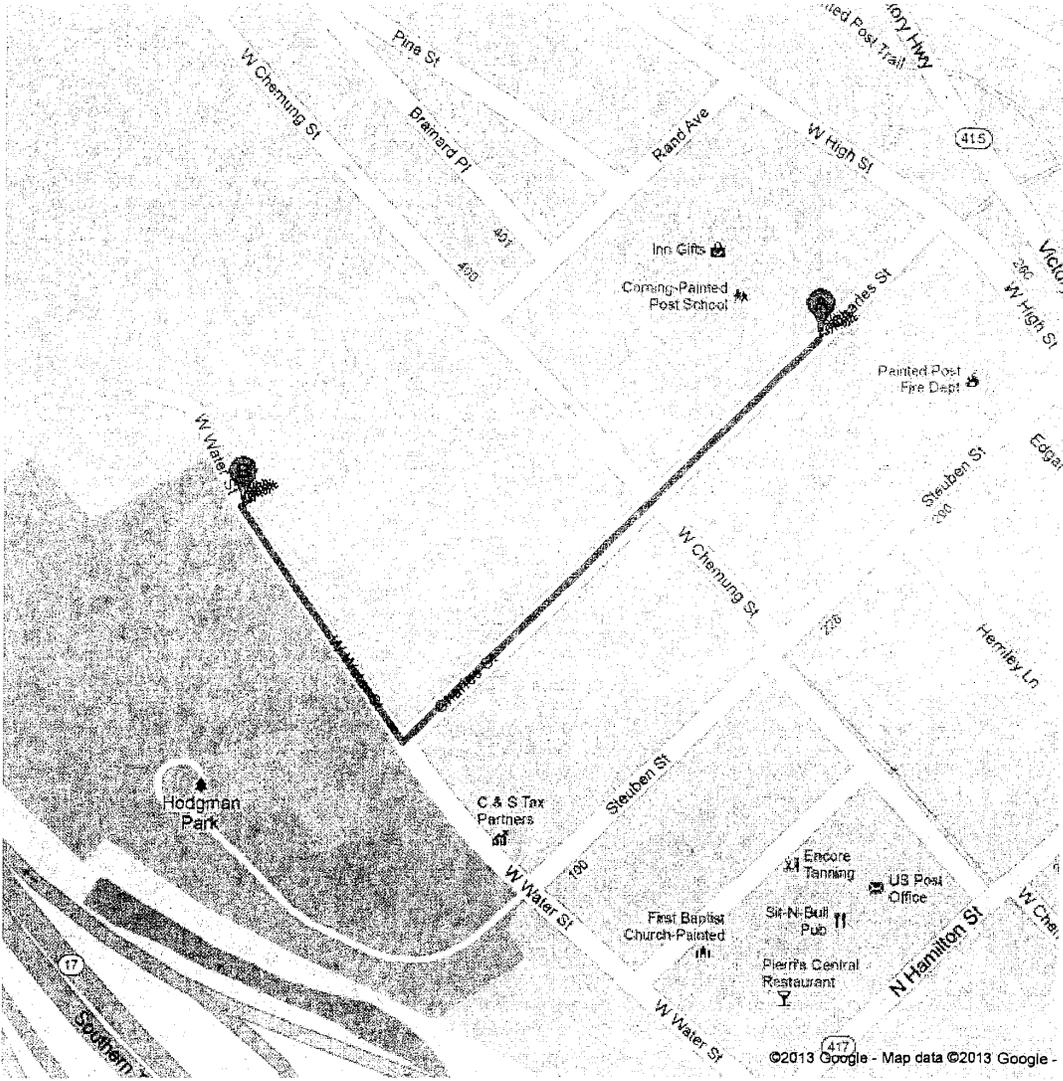
Materials on the Hydrogeology of the Corning Aquifer

Chemung River Valley Water Study, Town of Erwin, Town of Corning, City of Corning, Village of Painted Post,

EXHIBIT B – GOOGLE MAPS [634-639]

240 Charles St, Painted Post, NY 14870 to 350 W Water St, Painted Post, NY 14870 - Go... Page 1 of 2

Petitioner Marvin
Google
Directions to 350 W Water St, Painted Post, NY
14870
0.3 mi – about 1 min



 240 Charles St, Painted Post, NY 14870

1. Head **southwest** on **Charles St** toward **W Chemung St** go 0.2 mi
total 0.2 mi

 2. Turn **right** onto **W Water St** go 0.1 mi
total 0.3 mi
Destination will be on the right

 350 W Water St, Painted Post, NY 14870

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

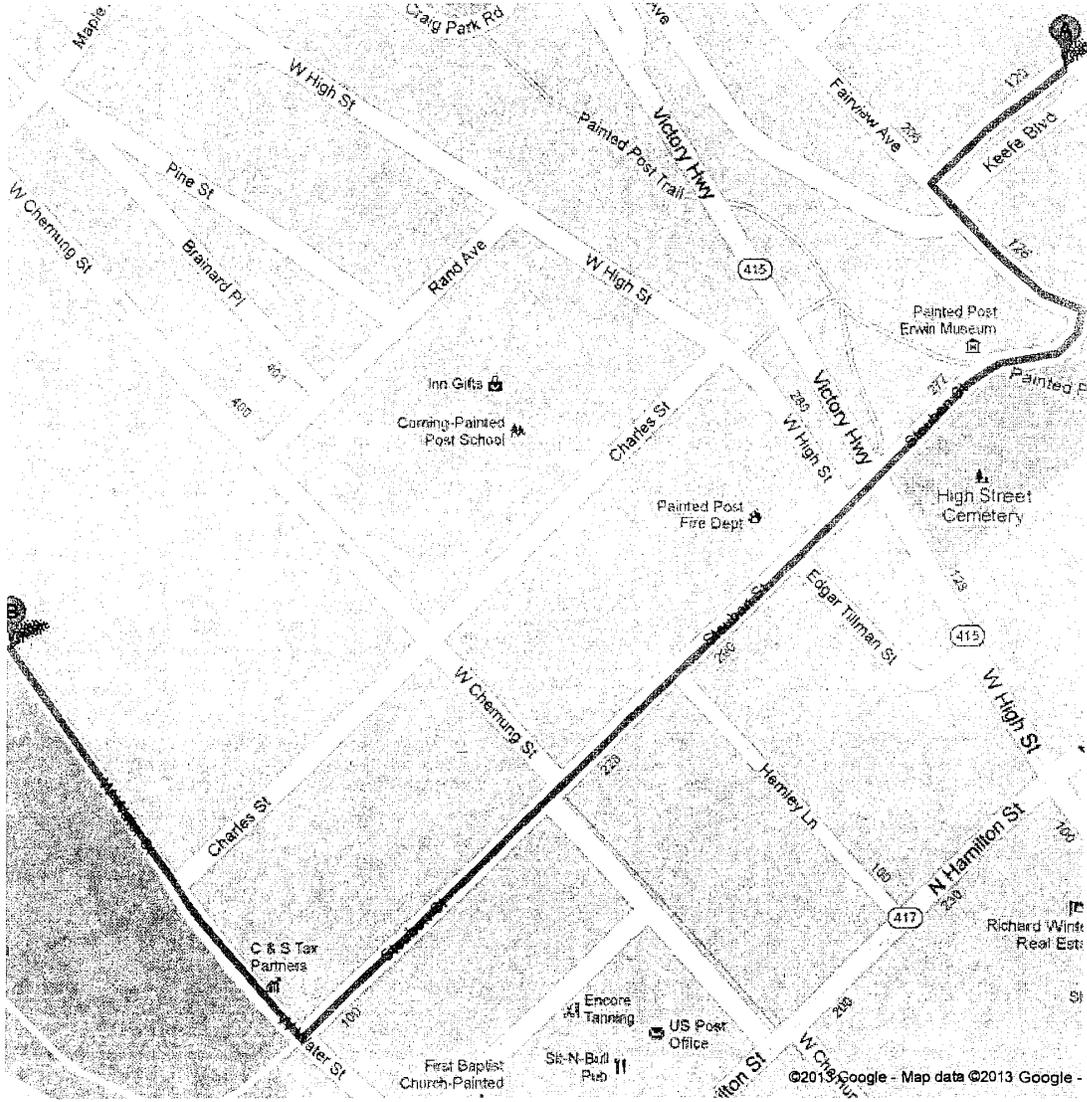
Map data ©2013 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

Google

Peptoner Virginia Hoff

Directions to 350 W Water St, Painted Post, NY 14870
0.7 mi – about 3 mins



 116 Keefe Blvd, Painted Post, NY 14870

-
- 1. Head **southwest** on **Keefe Blvd** toward **Fairview Ave** go 318 ft
total 318 ft
 -  2. Turn **left** onto **Fairview Ave** go 364 ft
total 0.1 mi
 -  3. Take the 2nd right onto **Steuben St** go 0.4 mi
total 0.5 mi
About 2 mins
 -  4. Turn **right** onto **W Water St** go 0.2 mi
total 0.7 mi
Destination will be on the right

 350 W Water St, Painted Post, NY 14870

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

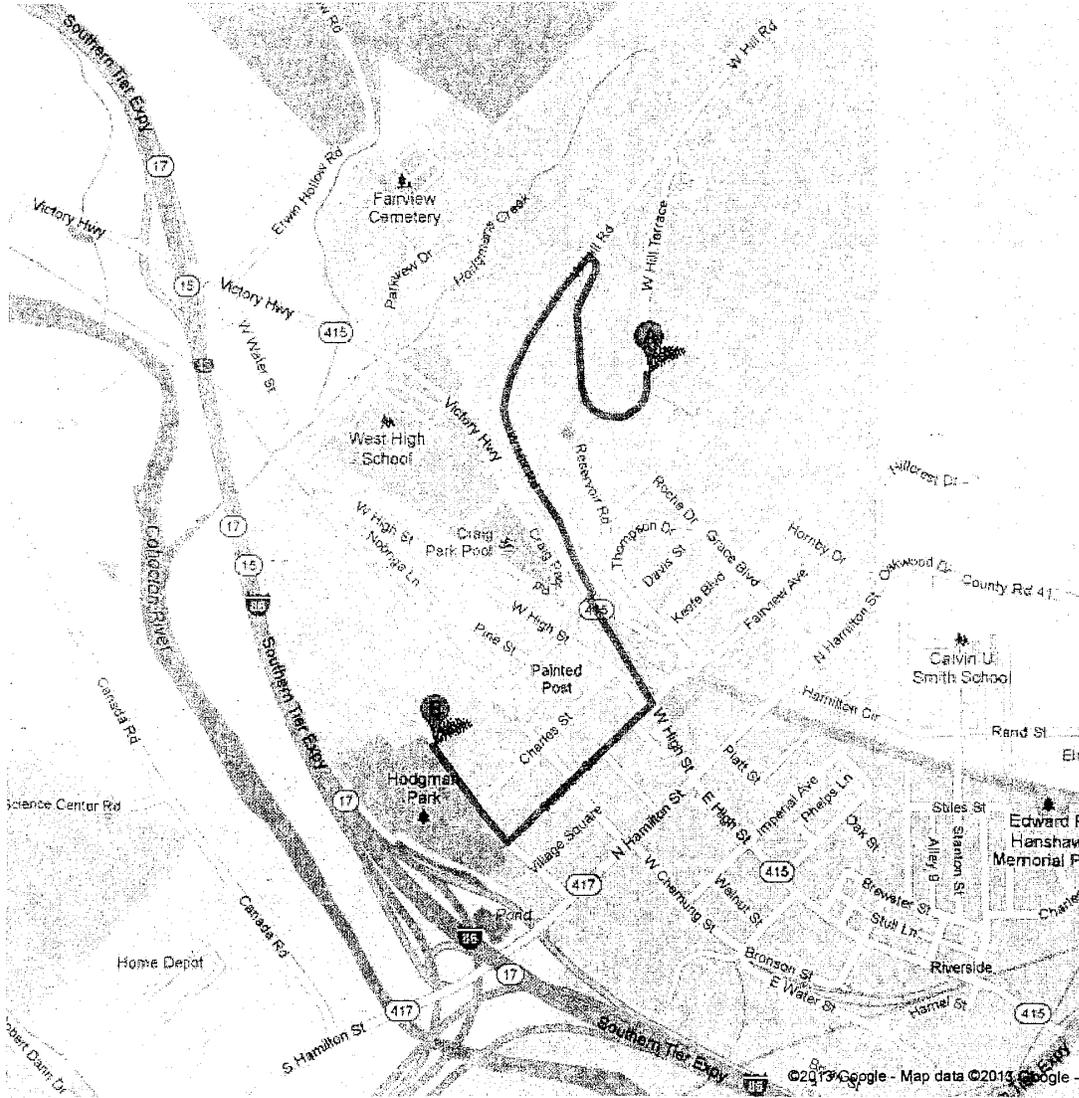
Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

123 W Hill Terrace, Painted Post NY 14870 to 350 W Water St, Painted Post, NY 14870... Page 1 of 2

Pet owners Michael and Therese Finnegan

Google

Directions to 350 W Water St, Painted Post, NY 14870
1.5 mi - about 6 mins



 123 W Hill Terrace, Painted Post, NY 14870

-
- 1. Head **south** on **W Hill Terrace** toward **path** go 0.4 mi
total 0.4 mi
About 51 secs
 -  2. Turn **left** onto **W Hill Rd** go 0.5 mi
total 0.9 mi
About 2 mins
 -  3. Turn left onto **NY-415** go 0.2 mi
total 1.1 mi
About 2 mins
 -  4. Take the 1st right onto **Steuben St** go 0.3 mi
total 1.4 mi
About 55 secs
 -  5. Take the 3rd right onto **W Water St** go 0.2 mi
total 1.5 mi
Destination will be on the right
-  350 W Water St, Painted Post, NY 14870
-

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

**AFFIDAVIT OF PAUL RUBIN, IN OPPOSITION TO RESPONDENTS' MOTION TO
DISMISS AND/OR FOR SUMMARY JUDGMENT, SWORN TO ON FEBRUARY 26, 2013
[640- 645]**

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN;
VIRGINIA HAUFF; and JEAN WOSINSKI,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Laws
and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and
WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

AFFIDAVIT IN OPPOSITION
TO RESPONDENTS' REPLY
MEMORANDUM OF LAW
AND SUPPORTING
AFFIDAVITS

Index No. 2012-0810CV

Justice Kenneth R. Fisher

State of New York,
County of Ulster, ss.:

PAUL RUBIN, being duly sworn, deposes and says:

1. I have reviewed the affidavits of Larry E. Smith, William R. Gough, and Robert M. Drew, each dated February 21, 2013, relative to whether there is hydrogeologic documentation capable of demonstrating the safe yield of the Corning aquifer.

2. Larry Smith seeks to undermine the hydrogeologic concerns I expressed in my affidavits of December 19, 2012 and January 25, 2013, by pointing out that he has an unstated number of years of experience as the Superintendent of Public Works of Painted Post and his local residency and claiming that he is therefore uniquely qualified to make professional hydrogeologic assessments. Unfortunately, Mr. Smith confuses time spent working in a particular position with the proper hydrogeologic training, analysis and assessment required to determine the long-term safe yield of an aquifer. Similarly, Mr. Smith seeks to use his unstated years as a resident of

Painted Post and Superintendent of Public Works in place of the technical training and assessment actually required. While he means well, his new affidavit fails to provide any meaningful empirical data that can be used to assess safe yield comprehensively throughout the entire aquifer or even in one location with adequate drawdown and recovery data from production and monitoring wells as previously discussed in my earlier affidavits. Mr. Smith does not even present one semi-log plot of drawdown vs. time such that standard 180-day drawdown projections can be made. Instead, he relies on old numbers of authorized well capacity, yet fails to provide a hydrogeologically founded basis for these numbers.

3. Hydrogeologists worldwide require technical aquifer test information to make informed decisions regarding safe yield. Modern permitting of large-scale development recognizes, uses, and requires aquifer testing to document long-term safe yield, not antiquated production data that cannot be used to assess the hydrogeologic characteristics of aquifers and their physical limitations. To believe that Mr. Smith and Mr. Gough could make their conclusions in the absence of empirical, reproducible, aquifer test data as required by professional hydrogeologists would be equivalent to the analogy frequently made by a highly respected hydrologist regarding the specialized documentation of groundwater flowpaths in karst (i.e., cave bearing) terrains: "*It's simple, like brain surgery, anyone can do it.*" Assessments of aquifer safe yield require detailed knowledge of aquifer boundary conditions, saturated aquifer conditions, knowledge of potentially overlapping cones of depression, cumulative water demand, and empirical pumping and recovery test data that can be analyzed. Repeated affidavit production that fails to provide any of this needed empirical aquifer test information is disingenuous. Hydrogeologic science and State permitting of large-scale water use for projects seek to avoid potential over withdrawal of aquifer water by requiring standardized testing throughout New York State. Such testing replaces the use of old production records that cannot adequately assess aquifer limitations or even the ability of individual wells to continuously produce high yields.

4. No supporting hydrogeologic data has been provided, just broad-based statements of "*extensive review of available information.*" Clearly, lengthy statements that are unsupported

by any of the technical aquifer test data required by hydrogeologists simply do not warrant any consideration. Mr. Smith's reference to years of production data as hydrogeologic proof of safe yield lacks any aquifer test data needed to determine aquifer parameters and safe yield. For example, important information that can be assessed from hydrogeologic assessment of aquifer test data includes the remaining saturated thickness of aquifer materials during dry and drought periods, whether continued pumping will dewater the remaining saturated aquifer, whether outward expansion of potentially overlapping cones of depression will quickly dewater the aquifer, whether aquifer boundary conditions have been or are likely to be encountered through long-term, high yield, pumping, whether pumping in one part of the aquifer will significantly impact or remove needed water used by neighboring towns, whether increased pumping may draw in existing contaminant threats, and important aquifer parameters including hydraulic conductivity, storage coefficient and hydraulic gradient that influence the safe yield of aquifers – none of these items and more can be adequately determined based on looking solely at production records.

5. Furthermore, to permit large-scale water withdrawals without a rigorously derived and documented assessment of safe yield may adversely impact Corning aquifer users during dry and drought periods, both as a result of insufficient water availability and from potential influx of contaminants from added induced recharge from overlying streams (GWUDI concerns). Avoidance of law suits based on lack of professional hydrologic analysis relative to safe yield and water quality would be wise. Hydrogeologists and State of New York permitting agencies require hydrogeologic testing and the data derived from it for a reason. The reason is that it is impossible to make informed, scientifically valid, determinations of safe yield without it (i.e., production data cannot be exclusively used for these evaluations).

6. As detailed in my previous affidavits, this information, at a minimum, requires regular drawdown and recovery water level data collected throughout 72-hour pumping tests from production and monitoring wells and subsequent aquifer water level recovery data, followed by hydrogeologic analyses of aquifer parameters, long-term 180-day drawdown projections,

assessment of overlapping cones of depression, drought analysis, and safe yield. There has been no empirical drawdown and recovery data provided to support Mr. Smith's claims. No hydrogeologist can conduct a comprehensive assessment of safe yield of an aquifer either locally or, more importantly, on the broader scale required without real, reproducible, field data.

7. Until actual data is provided that makes comprehensive assessment of Corning aquifer characteristics and safe yield possible by any hydrogeologist, affidavits purporting that there is sufficient safe yield for any expanded purposes year round should be disregarded. This is particularly true for aquifers where future water demand is likely. **Statements of Corning aquifer water availability based solely on production records derived from a small segment of the aquifer do not provide a sound technical basis for replacement of needed field data.** Should Mr. Smith elect to provide the needed aquifer test data, we look forward to evaluating it from a technical, safe yield, hydrogeologic standpoint. Until that time, I recommend that no additional large quantities of water be sold. In part, this has the potential of avoiding aquifer depletion during dry and drought periods and future lawsuits stemming from inadequate water availability.

Paul A. Rubin

Sworn to before me this 26th day of February 2013.

Katherine A. Cairo Davis

Notary Public, State of New York

KATHERINE A. CAIRO DAVIS
Notary Public, State of New York
4843340
Qualified in Ulster County
Commission Expires 07/31/2013

STATE OF NEW YORK
 SUPREME COURT : COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
 PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
 COALITION TO PROTECT NEW YORK; JOHN MARVIN;
 THERESE FINNERAN; MICHAEL FINNERAN;
 VIRGINIA HAUFF; and JEAN WOSINSKI,

AFFIRMATION OF SERVICE

Petitioners,

Index No. 2012-0810CV

For a Judgment Pursuant to Article 78 of the Civil Practice
 Laws and Rules

Justice Kenneth R. Fisher

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
 DEVELOPMENT, LLC; SWEPI, LP; and
 WELLSBORO AND CORNING RAILROAD, LLC,

Respondents.

I, Rachel Treichler, an attorney admitted to the practice of law before the courts of the State of
 New York, affirm the following to be true under the penalties of perjury pursuant to CPLR 2106:

1. That I am not a party to this action and am over 21 years of age.
2. That on February 27, 2013, I served a true copy of the within affidavit of Paul Rubin in
 the following manner: By mailing the same in a sealed envelope, with express postage
 prepaid thereon, in a post-office or official depository of the U.S. Postal Service within
 the State of New York, and via electronic mail, addressed to the last known addresses of
 the addressees shown below:

Honorable Kenneth R. Fisher
 Monroe County Hall of Justice
 99 Exchange Blvd.
 Rochester, NY 14614
 kfisher@courts.state.ny.us

Joseph D. Picciotti, Esq.
 Harris Beach PLLC
 99 Garnsey Road
 Pittsford, New York 14534
 jpicciotti@harrisbeach.com

John K. Fiorilla, Esq.
Capehart Scatchard
8000 Midlantic Dr., Ste 300S
Mt. Laurel, NJ 08054-5016
jfiorilla@capehart.com

Richard J. Lippes, Esq.
Lippes & Lippes
1109 Delaware Avenue
Buffalo, New York 14209-1601
rlippes@concentric.net

And via email only to:

James Bacon, Esq.
PO Box 575
New Paltz, NY 12561
baconesq@yahoo.com

Dated: February 27, 2013



Rachel Treichler
7988 Van Amburg Road
Hammondsport, NY 14840
(607) 569-2114
Attorney for the Petitioners

STIPULATION WAIVING CERTIFICATION [646-648]

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN; VIRGINIA
HAUFF; and JEAN WOSINSKI,

**STIPULATION WAIVING
CERTIFICATION**

Index No. 2012-0810

Petitioners,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the WELLSBORO
AND CORNING RAILROAD, LLC,

Respondents.

It is hereby stipulated pursuant to Rule 5532 of the Civil Practice Law and Rules that the Record on Appeal herein consists of true and correct copies of all the necessary papers identified in the Table of Contents set forth herewith and that certification of the record by the Clerk of the County of Steuben is hereby waived.

Dated: June 28, 2013

Dated: June __, 2013

HARRIS BEACH PLLC

By: 

Richard J. Lippes, Esq.
Rachel Treichler, Esq.
Attorneys for Petitioner
1109 Delaware Avenue
Buffalo, New York 14209

By: _____

Joseph D. Picciotti
John A. Mancuso
Attorneys for Respondents
The Village of Painted Post,
Painted Post Development, LLC and Swepi, LP
99 Garnsey Road
Pittsford, New York 14534

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of the SIERRA CLUB;
PEOPLE FOR A HEALTHY ENVIRONMENT, INC.;
COALITION TO PROTECT NEW YORK; JOHN MARVIN;
THERESE FINNERAN; MICHAEL FINNERAN; VIRGINIA
HAUFF; and JEAN WOSINSKI,

**STIPULATION WAIVING
CERTIFICATION**

Index No. 2012-0810

Petitioners,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

-against-

THE VILLAGE OF PAINTED POST; PAINTED POST
DEVELOPMENT, LLC; SWEPI, LP; and the WELLSBORO
AND CORNING RAILROAD, LLC,

Respondents.

It is hereby stipulated pursuant to Rule 5532 of the Civil Practice Law and Rules that the Record on Appeal herein consists of true and correct copies of all the necessary papers identified in the Table of Contents set forth herewith and that certification of the record by the Clerk of the County of Steuben is hereby waived.

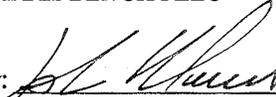
Dated: June ~~28~~²⁸, 2013

Dated: ~~June 28~~^{July 8}, 2013

HARRIS BEACH PLLC

By: 

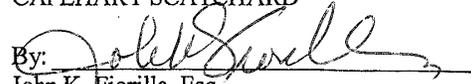
Richard J. Lippes, Esq.
Rachel Treichler, Esq.
Attorneys for Petitioner
1109 Delaware Avenue
Buffalo, New York 14209

By: 

Joseph D. Picciotti
John A. Mancuso
Attorneys for Respondents
The Village of Painted Post,
Painted Post Development, LLC and Swepi, LP
99 Garnsey Road
Pittsford, New York 14534

^{July}
Dated: June 2, 2013

CAPEHART SCATCHARD

By: 

John K. Fiorilla, Esq.
*Attorneys for Respondent Wellsboro
and Corning Railroad, LLC*
Suite 300 S
8000 Midlantic Drive
Mt. Laurel, NJ 08054

**ADDITIONAL DOCUMENTS ON APPEAL TO THE
NEW YORK STATE COURT OF APPEALS**

STATEMENT PURSUANT TO CPLR § 5531

DEC-18-2014 11:14

RICHARD J. LIPPES

716 884 6117 P.001

STATEMENT PURSUANT TO CPLR 5531

1. The Steuben County Clerk's Index No. 2012-0810; Appellate Division Docket No. CA 13-01558.

2. The full name of the original parties are as follows:

PETITIONERS: SIERRA CLUB; PEOPLE FOR A HEALTHY ENVIRONMENT, INC.; COALITION TO PROTECT NEW YORK; JOHN MARVIN; THERESA FINNERAN; MICHAEL FINNERAN; VIRGINIA HAUFF; and JEAN WOSINSKI,

RESPONDENTS: THE VILLAGE OF PAINTED POST; PAINTED POST DEVELOPMENT, LLC; and SWEPI, LP and WELLSBORO & CORNING RAILROAD, LLC

3. The action was commenced in Supreme Court, Steuben County.

4. The action was commenced on June 25, 2012 by Order to Show Cause.

5. This proceeding is an Article 78 proceeding, brought on by Order to Show Cause to enjoin the sale of 1,000,000 gallons of water per day from the Village of Painted Post public water supply for transportation to Pennsylvania.

6. This appeal is from a Memorandum and Order of the Appellate Division, Fourth Judicial Department, entered on March 28, 2014 which reversed the Order of the Supreme Court, Steuben County, Hon. Kenneth R. Fisher, dated March 25, 2013 and entered in the Steuben County Clerk's Office on April 8, 2013. The Appellate Division Decision abrogated the injunction entered by Justice Fisher, and dismissed the Petition for lack of standing.

7. The appeal is on the full record reproduced below.

LETTER FROM RACHEL TREICHLER TO THE APPELLATE DIVISION, FOURTH
DEPARTMENT, DATED NOVEMBER 22, 2013

LAW OFFICE OF RACHEL TREICHLER

7988 VAN AMBURG ROAD
HAMMONDSPORT, NY 14840
607-569-2114
TREICHLERLAW@FRONTIERNET.NET

November 22, 2013

Frances E. Cafarell
Clerk of the Appellate Division
Fourth Judicial Department
M. Dolores Denman Courthouse
50 East Avenue
Rochester, NY 14604

Re: Sierra Club et al. v. Painted Post et al., Docket No. CA 13-01558

Dear Ms. Cafarell:

I represent the Petitioners in the above-referenced case. Enclosed for filing are the appendices to Petitioners' brief that was filed yesterday. These appendices were inadvertently left out of the document.

Thank you very much for your courtesies.

Very truly yours,



Rachel Treichler

Enclosures

Cc: Richard J. Lippes, Esq.
Joseph D. Picciotti, Esq.

**APPENDIX A -
RESOLUTION – DETERMINATION OF NON-SIGNIFICANCE – VILLAGE OF PAINTED
POST PROPOSED CONTRACT FOR THE SALE OF SURPLUS WATER, DATED
FEBRUARY 23, 2012 [651- 652]**

**RESOLUTION
DETERMINATION OF NON-SIGNIFICANCE – VILLAGE OF PAINTED POST
PROPOSED CONTRACT FOR THE SALE OF SURPLUS WATER**

A regular meeting of the Board of Trustees (the "Board") of the Village of Painted Post was duly convened on February 23, 2012 at 5:00 p.m. at 261 Steuben Street, Painted Post, New York 14870 and said meeting having been properly publicly noticed and held, and at which there was a quorum present and participating throughout.

The following resolution was duly offered and seconded, to wit:

WHEREAS, it has been proposed that the Village of Painted Post ("Village") sell certain surplus potable water from the Village water supply to be drawn from the Village wells to SWEPI LP, ("SWEPI"), having an address at 200 N. Dairy Ashford Street, Houston, Texas 77079, as the Village is authorized to sell such surplus potable water and it desires to sell such water as proposed herein, and the Village water supply has sufficient capacity to sell such surplus water without negatively impacting the ability of the Village to provide water to current Village water supply customers and such finding is based upon various studies and analyses completed, including those completed by Hunt Architects, Engineers and Land Surveyors, P.C., pursuant to an engineering reported dated November 11, 2011 (the November 2011 Hunt Report").

WHEREAS, the Village has made application to and received permission from the Susquehanna River Basin Commission ("SRBC") to withdraw additional water in an amount of 1,000,0000 gallons per day ("gpd") which will be sold as surplus potable water in addition to the water that the Village is already withdrawing in order to supply current customers of the Village water supply system.

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York as amended, including the regulations thereunder associated with the New York State Environmental Quality Review Act, 6 N.Y.C.R.R. 617.1 *et seq.* (collectively referred to as "SEQRA"), the Village has determined that the sale of surplus water to SWEPI under the circumstances here is a Type II action under SEQRA pursuant to other provisions 6 N.Y.C.R.R. 617.5(c)(25), as discussed herein, the sale of surplus water is specifically exempted from SEQRA review.

NOW, THEREFORE, BE IT RESOLVED: Upon thorough review and due consideration of the Village of the proposed surplus water sale agreement for the sale of surplus water to SWEPI in the form presented to at this meeting and its review of the appropriate regulations and law concerning the sale of such surplus water, the Village makes the following findings:

I. The Village has considered the proposed sale of surplus water pursuant to the surplus water sale agreement in the form presented to at this meeting, and it has determined that the sale of surplus water pursuant to the proposed agreement is a Type II action under SEQRA

and therefore has been deemed by the legislature to have no significant negative environmental impact.

II. This resolution has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law and associated regulations.

III. The requirements of SEQRA concerning the proposed contract for the sale of surplus potable water pursuant to the surplus water sale agreement have been satisfied.

IV. This resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[X]	[]	[]	[]
William Scheidweiler	[]	[]	[]	[X]
Richard Lewis	[X]	[]	[]	[]
Richard Thorne	[X]	[]	[]	[]
Ralph Foster	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

Certification

I, the undersigned, being the Clerk of the Village of Painted Post hereby certified that the foregoing is a complete and accurate copy of a resolution duly enacted by the Village of Painted Post at a regular meeting thereof held on the 23rd day of February, 2012, duly called, publicly noticed and publicly held at which a quorum was present and participating thereat throughout and that said resolution has not be rescinded, modified or amended in any respect.

DATED: February 23, 2012

Anne Names
Anne Names, Clerk of the Village
of Painted Post, New York

**APPENDIX B -
RESOLUTION – VILLAGE OF PAINTED POST CONCERNING APPROVAL OF A
PROPOSED LEASE BY PAINTED POST DEVELOPMENT LLC, DATED FEBRUARY 23,
2012 [653- 655]**

**RESOLUTION - VILLAGE OF PAINTED POST CONCERNING
APPROVAL OF A PROPOSED LEASE BY PAINTED POST DEVELOPMENT LLC**

A regular meeting of the Board of Trustees (the "Board") of the Village of Painted Post was duly convened on February 23, 2012 at 5:00 p.m. at 261 Steuben Street, Painted Post, New York 14870 and said meeting having been properly publicly noticed and held, and at which there was a quorum present and participating throughout.

The following resolution was duly offered and seconded, to wit:

WHEREAS, the Village of Painted Post, on behalf itself and as the sole member of Painted Post Development, LLC ("PPD") (the "Village"), has reviewed the proposed lease by PPD to the Wellsboro & Corning Railroad, LLC, a federally regulated railroad (the "Railroad") of an approximately 11.8 acre portion of the 50 acre parcel formally owned and operated by Ingersoll-Rand Corporation ("Ingersoll Rand") located in the vicinity of 450 West Water Street, Village of Painted Post, New York (the "Site") and the land of which is the subject of the Lease is proposed for the development, construction and operation by the Railroad of a transloading facility ("the Facility" or "the transloading facility") whereby surplus potable water from the Village of Painted Post water distribution system from such water drawn from the Village wells not located on the Site will be loaded onto railroad cars for transport and distribution away from the Site (the "Lease").

WHEREAS, the Village of Painted Post has conducted a coordinated review of the Lease in accordance with applicable law, including federal law under the Interstate Commerce Commission Termination Act of 1995 and the federal Railroad Act of 1970 (collectively referred to as "ICCTA") as well as under Article 8 of the New York Environmental Conservation Law and applicable regulations under 6 N.Y.C.R.R. 617.1 et seq. known as the New York State Environmental Quality Review Act (SEQRA), and after reviewing applicable documentation including reports, analyses, a proposed site plan for the Site, an engineering report, a certain document constituting a bargain and sale deed entitled "Former Ingersoll-Rand Foundry Site, Steuben County, Painted Post, New York dated August 1, 2005 ("the 2005 Deed") as well as reviewing a completed Part I and Part II of a full Environmental Assessment Form completed in accordance with SEQRA, the Village has, in a prior resolution, issued a negative declaration formally determining that the Lease will have no significant negative impact on the Environment and such resolution approving the negative declaration for the Lease is incorporated herein by reference.

WHEREAS, as referenced, the transloading facility shall be operated on the Site in accordance with the Lease and shall include the design, planning, construction, equipping and operating and maintaining of a (i) filling/metering station and related improvements to be used for a filling/metering station; (ii) a rail siding on the Site and related improvements, included rail loading facilities, to connect to the existing rail line along Chemung Street adjacent to the Site to be used solely for the loading and transportation by rail car of surplus potable water drawn from the Village distribution system from Village wells not located on the Site; (iii) the acquisition and installation in and around the Site of certain machinery, equipment and other items of tangible personal property associated with the transloading facility to be operated at the Site;

WHEREAS, the Railroad, as lessee, shall in accordance with the Lease as presented in the form thereof at this meeting, be required to undertake each of the requirements imposed by applicable law and documentation associated with the property encompassing the Site, including but not limited to each of the requirements under the 2005 Deed with such conditions and restrictions including but are not limited to the following: (i) avoiding the use of ground water underlying the property subject to such restriction in the 2005 Deed, (ii) implementing each of the requirements of the 2005 Deed as applicable under the remedial work plan incorporated to it as well as incorporating the soil fill management protocol as required, as well as implementation/and or maintenance of identified institutional controls (i.e., maintaining fencing, and cover materials etc.) as well as abiding by the other requirements under the Lease associated with the management and control of stormwater, including as set forth in the report prepared by Hunt Engineers, Architects and Land Surveyors P.C. dated November 11, 2011 (“the November 2011 Hunt Report”) and abiding by each of the requirements and proposed measures to be implemented pursuant to the site plan proposed for the Site also provided and on file with the Village for the Facility including implementing measures required by the permit issued by the Department of Environmental Conservation for the Site pursuant to the State Pollutant Discharge Elimination System Permit Program, including a Stormwater Pollution Prevention Plan.

WHEREAS, the Village Board of Trustees has determined that it is in the best interest of PPD and the Village to execute the Lease in the form presented to at this meeting (the Proposed Lease) including the provisions set forth therein for lease payments, hold harmless protections and the other terms set forth therein subject to the findings set forth below.

NOW, THEREFORE, be it resolved:

Upon review and due consideration by the Village of the proposed Lease as well as the Village’s review of the completed SEQRA review and the issuance of a negative declaration, the Village makes the following findings:

- (i) The form and substance of the Lease Agreement (in substantially the form presented to at this meeting and/or in such form as is approved by the Mayor upon and with the advice of counsel to the Village) are hereby approved.
- (ii) The Mayor is hereby authorized, on behalf of the Village, to negotiate, execute and deliver the Lease Agreement and any related documents with such changes, variations, omissions and insertions as the Mayor shall approve upon and with the advice of counsel to the Village pending the satisfaction by the Village of a certain Mortgage and payoff of a certain Note (\$230,000 outstanding principal plus all accrued interest) associated with the former Ingersoll Rand Foundry, including all the conditions required to satisfy such Mortgage and Note including but not limited to securing appropriate environmental impairment liability insurance on which the parties may agree (and the payment by the Village of a portion of the premium associated therewith). The execution of the Lease Agreement and related documents by the Mayor shall constitute conclusive

evidence of such approval. The Mayor is further hereby authorized, on behalf of the Village, to designate any additional authorized representatives of the Village.

- (iii) The Mayor is hereby authorized and directed for and in the name and on behalf of the Village to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the Mayor, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Village with all of the terms, covenants and provisions of the documents executed for and on behalf of the Village. .
- (iv) Due to the complex nature of this transaction, the Village hereby authorizes its Mayor to approve, execute and deliver such further agreements, documents and certificates as the Village may be advised by counsel to the Village or Transaction Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Mayor.
- (v) The resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[X]	[]	[]	[]
William Scheidweiler	[]	[]	[]	[X]
Richard Lewis	[X]	[]	[]	[]
Richard Thorne	[X]	[]	[]	[]
Ralph Foster	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

Certification

I, the undersigned, being the Clerk of the Village of Painted Post hereby certified that the foregoing is a complete and accurate copy of a resolution duly enacted by the Village of Painted Post at a regular meeting thereof held on the 23rd day of February, 2012, duly called, publicly noticed and publicly held at which a quorum was present and participating thereat throughout and that said resolution has not be rescinded, modified or amended in any respect.

DATED: February 23, 2012

Anne Names
Anne Names, Clerk of the Village
of Painted Post, New York

MEMORANDUM AND ORDER OF THE APPELLATE DIVISION, FOURTH DEPARTMENT,
ENTERED MARCH 28, 2014 [656-659]

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

202

CA 13-01558

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, LINDLEY, AND WHALEN, JJ.

IN THE MATTER OF SIERRA CLUB, PEOPLE FOR A
HEALTHY ENVIRONMENT, INC., COALITION TO PROTECT
NEW YORK, JOHN MARVIN, THERESA FINNERAN, MICHAEL
FINNERAN, VIRGINIA HAUFF AND JEAN WOSINSKI,
PETITIONERS-RESPONDENTS,

V

MEMORANDUM AND ORDER

VILLAGE OF PAINTED POST, PAINTED POST
DEVELOPMENT, LLC, SWEPI, LP,
RESPONDENTS-APPELLANTS,
AND WELLSBORO AND CORNING RAILROAD, LLC,
RESPONDENT-RESPONDENT.

HARRIS BEACH PLLC, PITTSFORD (JOSEPH D. PICCIOTTI OF COUNSEL), FOR
RESPONDENTS-APPELLANTS.

RICHARD J. LIPPES & ASSOCIATES, BUFFALO (RICHARD J. LIPPES OF
COUNSEL), AND RACHEL TREICHLER, HAMMONDSPORT, FOR
PETITIONERS-RESPONDENTS.

JANE E. TSAMARDINOS, ALBANY, FOR NEW YORK STATE CONFERENCE OF MAYORS
AND MUNICIPAL OFFICIALS, AMICUS CURIAE.

JAMES BACON, NEW PALTZ, FOR COMMUNITY WATERSHEDS CLEAN WATER
COALITION, INC., AMICUS CURIAE.

KATHERINE HUDSON, WATERSHED PROGRAM DIRECTOR, WHITE PLAINS, FOR
RIVERKEEPER, INC. AND KATHERINE SINDING, NEW YORK CITY, FOR NATURAL
RESOURCES DEFENSE COUNCIL, AMICI CURIAE.

Appeal from a judgment (denominated order) of the Supreme Court, Steuben County (Kenneth R. Fisher, J.), entered April 8, 2013 in a proceeding pursuant to CPLR article 78. The judgment, insofar as appealed from, denied in part the motion of respondents Village of Painted Post, Painted Post Development, LLC, and SWEPI, LP to dismiss the petition and granted petitioners summary judgment on the first cause of action.

It is hereby ORDERED that the judgment insofar as appealed from is unanimously reversed on the law without costs, the motion of respondents-appellants is granted in its entirety and the petition is dismissed against them.

Memorandum: The Village of Painted Post (Village), Painted Post Development, LLC and SWEPI, LP (collectively, respondents) appeal from a judgment insofar as it denied that part of their motion pursuant to CPLR 3211 and 3212 with respect to the first cause of action and awarded petitioners summary judgment on that cause of action. Supreme Court otherwise granted respondents' motion and dismissed the second and third causes of action. In denying that part of respondents' motion with respect to the first cause of action, the court concluded that petitioner John Marvin was the only petitioner who had standing to bring the proceeding and that the sole ground upon which he had standing was his "proximity and [his] complaint of train noise newly introduced into his neighborhood." Based upon its determination that Marvin had standing, the court refused to dismiss the petition with respect to the remaining petitioners despite their lack of standing (see generally *Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 813, cert denied 540 US 1017; *Maraia v Orange Regional Med. Ctr.*, 63 AD3d 1113, 1115). We agree with respondents that Marvin lacked standing, and we thus conclude that the court erred in refusing to dismiss the petition against them.

There is no dispute that "[c]ourts surely do provide a forum for airing issues of vital public concern, but so do public hearings and publicly elected legislatures, both of which have functioned here. By contrast to those forums, a litigant must establish its standing in order to seek judicial review" (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769). "With the growth of litigation to enforce public values, such as protection of the environment, the subject of standing has become a troublesome one for the courts" (*id.* at 771). " '[I]njury in fact' has become the touchstone" for standing (*id.* at 772), because "[t]he existence of an injury in fact—an actual legal stake in the matter being adjudicated—ensures that the party seeking review has some concrete interest in prosecuting the action" (*id.*).

It is well established that "[s]tanding requirements 'are not mere pleading requirements but [instead are] an indispensable part of the plaintiff's case[,] and therefore 'each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof' " (*Matter of Save the Pine Bush, Inc. v Common Council of City of Albany*, 13 NY3d 297, 306). Where, as here, the proceeding does not involve a "zoning-related issue . . . , there is no presumption of standing to raise" a challenge under the State Environmental Quality Review Act ([SEQRA] ECL art 8) based solely on a party's proximity (*Matter of Save Our Main St. Bldgs. v Greene County Legislature*, 293 AD2d 907, 908, lv denied 98 NY2d 609; see *Matter of Rent Stabilization Assn. of N.Y.C., Inc. v Miller*, 15 AD3d 194, 194-195, lv denied 4 NY3d 709; *Matter of Oates v Village of Watkins Glen*, 290 AD2d 758, 761). In such a situation, the party seeking to establish standing must establish that the injury of which he or she complains "falls within the 'zone of interests,' or concerns, sought to be promoted or protected" (*Society of Plastics Indus.*, 77 NY2d at 773), and that he or she "would suffer direct harm, injury that is in some way different from that of the public at large" (*id.* at 774; see *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, 433).

While we agree with petitioners that noise falls within the zone of interests sought to be protected by SEQRA (see *Matter of Long Is. Contractors' Assn. v Town of Riverhead*, 17 AD3d 590, 594-595; *Matter of McGrath v Town Bd. of Town of N. Greenbush*, 254 AD2d 614, 616, lv denied 93 NY2d 803; see generally ECL 8-0105 [6]), we conclude that respondents met their burden of establishing as a matter of law that Marvin did not sustain an injury that was different from that of the public at large.

This CPLR article 78 proceeding concerns Village resolutions that authorized the sale and export of excess water from the municipal water supply. To assist in the exportation of the water, the resolutions permitted the construction of a transloading facility to load the water onto trains that would then transport the water to the buyer in Pennsylvania. Respondents, in support of their motion, established that the trains that would transport the water would utilize an existing rail line that traversed the entire Village. In his affidavit in opposition to respondents' motion, Marvin contended that his house was "one-half block from the railroad line" and that, following commencement of the water shipments, he began to hear "train noises frequently, sometimes every night." Marvin averred that he "heard either the train whistle or the diesel engines themselves or both." The noise was allegedly so loud that it "woke [him] up and kept [him] awake repeatedly." Notably, Marvin raised no complaints concerning noise from the transloading facility itself.

The maps of the area submitted by respondents and petitioners in connection with the motion demonstrate that the rail line at issue runs through the entire Village, along a main thoroughfare. One image also establishes that there are a multitude of houses along the path of the railroad, many of which are closer to the rail line than Marvin's residence. As noted in an affidavit from two Village residents submitted by petitioners in opposition to the motion, the noise from the moving trains affected many of the Village residents, a large number of whom expressed their concerns at a village board meeting.

Inasmuch as we are dealing with the noise of a train that moves throughout the entire Village, as opposed to the stationary noise of the transloading facility, we conclude that Marvin will not suffer noise impacts "different in kind or degree from the public at large" (*Society of Plastics Indus.*, 77 NY2d at 778). "[S]tanding cannot be based on the claim that a project would indirectly affect . . . noise levels . . . throughout a wide area" (*Save Our Main St. Bldgs.*, 293 AD2d at 909 [internal quotation marks omitted]; see *Society of Plastics Indus.*, 77 NY2d at 775; *Oates*, 290 AD2d at 760-761; cf. *Matter of Muir v Town of Newburgh, N.Y.*, 49 AD3d 744, 746). Here, as in *Save Our Main St. Bldgs.*, because "none of the individual petitioners alleges a unique, direct environmental injury," none of the organizational petitioners can be found to have standing (*id.* at 909).

Based on our determination, we do not address respondents'

remaining contentions.

Entered: March 28, 2014

Frances E. Cafarell
Clerk of the Court

ORDER OF THE NEW YORK STATE COURT APPEALS GRANTING LEAVE TO APPEAL,
DECIDED OCTOBER 23, 2014

DEC-18-2014 11:15

RICHARD J. LIPPES

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P.001/001

State of New York
*Court of Appeals**Decided and Entered on the
twenty-third day of October, 2014***Present,** HON. JONATHAN LIPPMAN, *Chief Judge, presiding.*

Mo. No. 2014-767In the Matter of Sierra Club,
et al.,

Appellants,

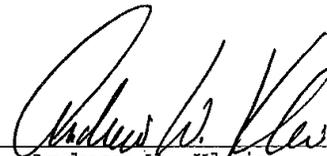
v.

Village of Painted Post, et al.,

Respondents.

Appellants having moved for leave to appeal to the Court
of Appeals in the above cause;

Upon the papers filed and due deliberation, it is
ORDERED, that the motion is granted.



Andrew W. Klein
Clerk of the Court

CERTIFICATION PURSUANT TO CPLR § 2105

I, Richard J. Lippes, a member of the firm of Richard J. Lippes & Associates, attorneys for the Petitioners-Appellants, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals filed herein and have been found to be true and complete copies of said originals and the whole thereof, all of which are now on file in the office of the Clerk of the County of Steuben.

Dated: December 18, 2014

Attorney for Petitioners-Appellants