

SUPREME COURT  
STATE OF NEW YORK COUNTY OF STEUBEN

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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.

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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 NEW YORK )  
COUNTY OF STEUBEN) ss.:

ROSWELL CROZIER, JR., being duly sworn deposes and says:

1. I am the Mayor of the Village of Painted Post ("the Village") and a member of the Board of Trustees for the Village (the "Village Board") (sometimes the Village Board and the Village will be collectively referred to as "the Village"). The statements made in this affidavit are based upon my personal knowledge, including based upon my review of pertinent documents including those identified herein concerning the facility that has been completed and actions taken which are being challenged by a Verified Petition filed in this matter and served on the Village on or about July 6, 2012 (the "Petition"). This affidavit is submitted in support of Respondents' motion to dismiss and/or for summary judgment, and in opposition to the Petition.

A. The Site of the Transloading Facility is Zoned for Industrial Use and the Operation of the Transloading Facility is Consistent with Uses in the Village.

2. I have been Mayor of the Village of Painted Post since 2010, and prior to that time I served as Mayor from 1996-2002. I was a member of the Village Board of Trustees from approximately 1994-1996. I am fully familiar with the Village of Painted Post as I have lived in the Village for more than 45 years. The Petition notes all kinds of concerns about the facility which has been built to facilitate the sale of surplus water (the "Transloading Facility"), ranging from alleged concerns about the location of the site where surplus water will be loaded onto train cars because it is allegedly close to houses, to concerns about the operation of the train that will be used to transport such water, and alleged concerns that withdrawing such water will impact the Village wells and/or aquifers.

3. I cannot understand the basis for any of the above referenced concerns, as the location for the operation whereby surplus water will be withdrawn is a site that has been zoned industrial for decades, and the site will use a rail line that has been operational in the Village for at least as long as industrial operations have taken place at the referenced site. In fact, I believe the rail line which will be used here for the Transloading Facility was operational prior to the time that any of the Petitioners who actually live in the Village moved into their homes. Similarly, concerns about impacts to water and aquifers are misplaced given the approvals granted by the Susquehanna River Basin Commission, the approvals granted by state agencies, and the extensive review the Village Board which did not identify any issues of significant concern.

4. It should be noted that the sale of surplus water will provide a needed source of revenue to the Village which is a small municipality which has lost tax base, including from the loss of industry and jobs over the past 20 years. The sale of surplus water will allow the Village to generate funds that will be used for needed capital improvement projects, including for upgrades and repairs to the Village's water system as also discussed in the affidavit of Larry E. Smith,

Superintendent of the Department of Public Works. Further, we hope to use funds generated from the sale of surplus water to hold the line on tax increases, if not potentially lower taxes to Village residents. I would also note that no federal funding was sought or received for any portion of the Transloading Facility or other matters with which the Petitioners are making claims in this proceeding.

B. The Village's Review of Potential Impacts from the Transloading Facility Met Applicable Requirements.

5. As background, as fully set forth in the other documents submitted on behalf of the Village in this matter in support of the motion, in reviewing the proposed lease of a portion of the former Ingersoll-Rand site at 350 West Water Street (the "Transloading Facility Site") for the operation of the Transloading Facility by the Wellsboro & Corning Railroad, LLC (the "Railroad"), the Village through the Village Board carefully considered impacts arising from the operation of the Transloading Facility to be constructed.

6. In this regard, the Village Board with the assistance of Village staff, including Mr. Smith, as well as the assistance of other professionals including Hunt Engineers, Architects and Land Surveyors, P.C. ("Hunt"), carefully reviewed each of the aspects of the proposed lease with the Railroad (the "Lease") as well as the withdrawal of water proposed pursuant to the operation of the Transloading Facility. Moreover, in reviewing potential impacts from the Lease, as well as the sale of surplus water, the Village Board reviewed impacts from the construction and operation of the Transloading Facility before it issued a resolution authorizing the Village to move forward with the Lease. The Village also carefully reviewed the issues associated with the sale of surplus water to analyze whether it was in the Village's best interests to move forward with it, and after reviewing the pertinent issues, the Village Board issued a resolution authorizing the Village to execute a contract for the sale of such water.

7. The Village's exhaustive review in this regard included, but was not limited to, reviewing and analyzing the report of Hunt dated November 11, 2011 ("the Hunt Report"), as well as considering information and other documentation associated with the Full Environmental Assessment form completed for the project, including parts 1 and 2 of it. Correspondence received from the New York State Department of Environmental Conservation and the New York State Department of Health associated with various permits and authorizations for the operation of the Transloading Facility was also reviewed. The Village also considered the requirements concerning operations at the Site including those set forth in the Bargain and Sale deed entitled "former Ingorsoll Rand Foundary site, Steuben County, Painted Post, New York" dated August 1, 2005.

8. The Village's review of the potential impacts associated with the operation of the Transloading Facility culminated in the consideration and approval of a resolution adopting a negative declaration which was approved and filed on February 23, 2012 (the "Negative Declaration"), a copy of which is attached as Exhibit "A" and which is part of the Administrative Record in this matter. As set forth in detail in the Negative Declaration, the Village carefully considered each aspect of the operation of the Transloading Facility, including the withdrawal of water associated with such operation. After careful consideration each of the reports, documents and analyses as more fully referenced in the Negative Declaration, the Village determined that the construction and operation of the such facility, including the withdrawal of water associated with its operation, the use of a train to transport the surplus water and other operations would not result in any significant negative impact.

C. The Village's Review of the Sale of Surplus Water Met Applicable Requirements

9. In addition to voting on and approving the Negative Declaration on February 23, 2012, the Village Board also enacted a resolution authorizing it to enter into a contract for the sale of surplus water under specific conditions to SWEPI, LP ("SWEPI"). In reviewing appropriate regulations with Village staff as well as professionals assisting it, the Village through the Village

Board determined that the contract for the sale of water where it would be limited to surplus water that was available under certain conditions qualified as a so-called Type II action under the New York State Quality Review Act. That being said, as set forth in the Negative Declaration for the Transloading Facility, the Village Board carefully considered each of the impacts associated with the withdrawal of water, including but not limited to potential impacts to the Village Water System and it also considered the fact that the proposed withdrawal had been approved by the Susquehanna River Basin Commission. In fact, as set forth in the resolution associated with adoption of the resolution authorizing the Village to enter into a contract of sale of surplus water to SWEPI, the Village set out the bases for its approval of the same, which included its review of the Hunt Report which evaluated the impact of the sale of surplus water on the Village Water System and its users.

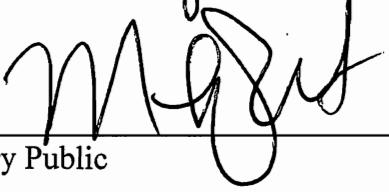
10. Further, in enacting the resolution authorizing the Village to enter into the sale of surplus water, the Village Board specifically incorporated by reference the findings made in the Negative Declaration resolution for the Transloading Facility into the resolution approving the surplus water agreement. Attached as Exhibit "B" is the Village resolution approving the sale of surplus water, which is also submitted as part of the Administrative Record.

11. As discussed above, the Susquehanna River Basin Commission (SRBC) is the body which authorizes withdrawals from the Village Water Supply System. As noted in the Administrative Record and the other documents submitted on behalf of the Village in this matter, SRBC has determined that the Village has more than adequate water to provide surplus water to SWEPI under the contract's conditions, and that the sale of such water would not adversely impact the Village Water System, its users, or the aquifer at issue. The Village through the Board of Trustees in enacting the resolution authorizing the execution of the contract for the sale of surplus water specifically considered SRBC's approval of such withdrawals.

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.

  
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ROSWELL CROZIER, JR

Sworn to before me this  
1<sup>st</sup> 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

**RESOLUTION  
NEGATIVE DECLARATION – VILLAGE OF PAINTED POST  
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 directed, by and through legal counsel for the Village, the completion and filing of Part I and Part II of a Full Environment Assessment Form ("Full EAF") prepared in accordance with the requirements under Article 8 of the New York Environmental Conservation Law and applicable regulations including 6 N.Y.C.R.R. 617.1 et seq. known collectively as the New York State Environmental Quality Review Act (referred to hereinafter sometimes as "SEQRA") concerning a proposed lease by PPD to the Wellsboro & Corning Railroad, LLC, a federally regulated railroad (the "Railroad"), of approximately 11.8 acres of a 50 acre parcel formally owned by Ingersoll-Rand Corporation ("IR" or "Ingersoll Rand") located in the vicinity of 450 West Water Street, Village of Painted Post, New York (the "Site") for the development and creation of a transloading facility (the "Facility") that will load surplus potable water from the Village's water distribution system to railroad tanker cars at the Site (the "Lease") for distribution by rail.

**WHEREAS**, the Site is proposed to be used for the construction and operation of the Facility by the Railroad, and development thereof it at the Site includes the design, planning, construction, equipping, operating and maintaining of a (i) filling/metering station and related improvements to be used for a filling/metering station on the Site; and (ii) a rail siding and related improvements on the Site, as well as related rail loading facilities to connect the existing rail line along Chemung Street to be used solely for the loading and transportation of surplus potable water from the Village's wells located away from the Site and through the Village's water distribution system; and (iii) the acquisition and installation in and around the Site of improvements including certain machinery, equipment and other items of tangible personal property appropriate for the operation of the transloading facility at the Site.

**WHEREAS**, as set forth in more detail below, the action associated with the leasing of the Site by PPD to the Railroad is being reviewed pursuant to SEQRA, but any activities to be conducted on the Site associated with the Lease, including the construction, development, and operation of the Site as a transloading facility by the Railroad is not subject to compliance with local zoning laws or regulation, nor is such construction, development and operation of the Facility subject to compliance with state law requirements including those under SEQRA, as the development, construction, operation and maintenance of the transloading facility by the Railroad is being undertaken under the jurisdiction of the Interstate Commerce Commission Termination Act of 1995, the Federal Railway Act of 1970 and other federal law and regulations associated with the operation of rail facilities (collectively referred to as "ICCTA"), and because

ICCTA applies to the development, construction, operation and maintenance of the Facility at the Site, local and state law as well as approvals associated with the construction and operation of the Facility at the Site are not required to be obtained and such laws, regulations and requirements are pre-empted under ICCTA.

**WHEREAS**, the Village's legal counsel directed the submission of the referenced Part I of the full EAF for the Lease, as well as a copy of a site plan and other information to various interested and involved agencies by correspondence dated January 23, 2012 notifying them of the Village's intent to act as lead agency for the SEQRA review to be undertaken of the Lease, and also informing such agencies that the construction and operation of the Site by the Railroad as a transloading facility are matters under the jurisdiction of ICCTA, and therefore exempt from SEQRA and review and local and state approvals.

**WHEREAS**, PPD has directed the proposed lessee for the Site to make application necessary to construct and operate the Facility including certain applications to the New York State Department of Environmental Conservation ("DEC") associated with stormwater controls and construction at the Site, as well as applications to the New York State Department of Health for the extension of certain service connections and piping on the Site in order to convey surplus potable water from Village wells located away from the Site through the Village water distribution system through lines located on the Site surface, as well as other applications and approvals as appropriate.

**WHEREAS**, none of the involved agencies including the DEC and DOH has objected to the Village as the lead agency for the SEQRA review of Lease within the 30-day period as required under SEQRA, and as such, pursuant to the applicable requirements, the Village has been installed as the lead agency for the SEQRA review of the Lease. The Village further hereby approves and confirms its desire to act as lead agency for the SEQRA review of the Lease, and confirms that it has been so installed in accordance with regulation.

**WHEREAS**, in accordance with the requirements of SEQRA, the Village has carefully considered and analyzed the relevant areas of impact and potential impact on the environment from the Lease as is set forth in more detail below by undertaking a review of the relevant conditions and relevant issues associated with the Lease, including by the Village considering and reviewing the completed Full EAF, including Parts I and II of it, and by reviewing additional information concerning the Lease as well as the site plan prepared by the engineer for the Railroad for the transloading facility, as well as considering the report dated November 11, 2011 prepared by Hunt Engineers, Architects and Land Surveyors, PC (the "November 2011 Hunt Report"), as well as considering the requirements for ongoing uses and operations of the former IR Foundry contained in the bargain and sale deed entitled "Former Ingersall-Rand Foundry Site, Steuben County, Painted Post, New York, dated August 1, 2005 (the "2005 Deed") and documents, plans and requirements under the 2005 Deed, including the installation and maintenance of certain institutional controls (i.e., fencing, installation of a cover over a portion of the property, restriction on the use of water derived from the site, etc.), as well as protocols for the handling and removal of certain soils on the Site and in the area of the Site, and other applicable documents, reports and matters for the Site.

WHEREAS, the Village has considered information from other involved agencies, including correspondence from the New York State Department of Environmental Conservation and correspondence, comments and input and other information from other involved and/or interested agencies;

NOW, THEREFORE, BE IT RESOLVED: Upon thorough review and due consideration of the Village of the Full Environmental Assessment Form, including reviewing the completed answers to Parts I and II of such form and reviewing applicable correspondence and input from interested and involved agencies, including correspondence from the New York State Department of Environmental Conservation and considering the requirements of the 2005 Deed for maintaining and operating land associated with the former foundry, as well as considering the November 2011 Hunt Report, the proposed site plan completed for the Site for construction and operation of the transloading facility, as well as considering the provisions of the Lease and other applicable documents as well as considering the fact that the construction, operation, and maintenance of the Site as a transloading facility by the Railroad is not subject to SEQRA review or other local zoning or other requirements the Village makes the following findings:

I. The Village has considered leasing of the Site pursuant to the parameters and criteria set forth in 6 N.Y.C.R.R. §§617.2(b) and 617.3(g) as proposed herein, including but not limited to considering each of the provisions of the Lease, including each of the schedules attached to it, and considering the actions related to the Lease, but also considering the fact that any actions associated with the construction, development, operation and maintenance of the transloading facility by the Railroad on the Site are subject to ICCTA pre-emption, and therefore such actions are not required to be reviewed under SEQRA.

II. The Village has previously classified its review of the Lease as a Type I action pursuant to 6 N.Y.C.R.R. §617.4.

III. The Village has carefully reviewed the Full Environmental Assessment Form including the responses provided in Parts I and II of same, as well as considering other pertinent documents previously referenced including the 2005 Deed, the November 2011 Hunt Report, as well as the site plan prepared by Hunt Engineers for operation of the Facility on the Site, and also on file with the Village and considering the criteria in 6 N.Y.C.R.R. §617.7(c), including but not limited to considering whether the Lease contemplates substantial adverse changes in various pertinent environmental media including to air, to ground or surface water, as well as changes to quantity or quality of traffic as well as considering changes to noise levels, and from odors, and the Village has considered the comments and input received by involved and interested agencies, as well as the comments and concerns of the public and other information provided to the Village.

Based upon the foregoing, the Village through its Board of Trustees has thoroughly reviewed the potential relevant area of environmental concern and finds the Lease will not result in any potentially significant adverse impact on the environment for the following reasons:

- A. *Transportation.* The Lease will not result in any significant additional vehicular traffic associated with the Site or associated with the construction, development or operation of the transloading facility on it. Moreover, as detailed previously, while ICCTA preemption applies so that an evaluation of any potential impacts on transportation including from any additional traffic is not required to be performed under SEQRA; nevertheless, the transloading facility proposed for the Site including its development, construction and operation is not anticipated to result in any significant additional vehicular traffic, as the operations at the Site will be loading of train cars with surplus potable water. Indeed, as set forth in detail in Part I and Part II of the EAF, there is no anticipated material increase in vehicular traffic, including truck traffic associated with operation of the transloading facility. Some additional traffic will be generated during construction of the Facility, but as construction is only expected to last for less than five (5) months, any such impacts will be short term and are not anticipated to be significant.
- B. *Community and Neighborhood Character and Land Use.* The Lease Site is located in an area zoned for industrial use under the Village Code which classifications that apply to the Site including several allowable uses consistent or specifically authorized by the development and operation of the transloading facility, including warehousing and other industrial uses; as such the Facility is consistent with such zoning for the area of the Site. In addition, it is believed that the operation of the transloading facility at the Site is not inconsistent with any adopted master plan or similar plan for the area associated with the Site.
- C. *Noise and Odor.* The Lease is not expected to result in any significant increase in noise or odors. Further, the operation of the transloading facility, while not subject to SEQRA review pursuant to ICCTA pre-emption, is also not expected to result in any significant increases in noise or odor as the operation of the Facility will be undertaken in such a manner that no significant adverse noise and/or odor impacts are anticipated as water will simply be loaded automatically onto train cars and the train cars will be moved into and out of a rail siding associated with the lease Site. As indicated, any impacts associated with construction would be short term and are not expected to be significant.
- D. *Public Health.* As set forth in more detail in the EAF, the Lease Site is located on land previously operated by Ingersoll Rand as a Foundry and for other operations. The Lease Site including a larger parcel of land on which it is located has been the subject of numerous investigations and remedial actions to address contamination, and the area encompassing the area including the Site was formerly listed as an inactive hazardous waste site by the State of New York. Pursuant to numerous investigations and remedial actions including removal actions, soil cleanup, etc. and other remedial actions, the New York State Department of Environmental Conservation (hereinafter referred to as "the DEC" or "the Department") has de-listed the Site or removed it from the inactive hazardous waste site list, as the Department has determined that required investigation and remediation of contamination associated with the former Ingersoll Rand Foundry and associated operations area has been completed to the Department's satisfaction.

As documented in the 2005 Deed (together with attachments) as well as documented in the November 2011 Hunt Report, the Department has determined that the investigation and remediation of the land formerly encompassing the Ingersall Rand Foundry and other operations on portion of which the transloading facility is proposed to be operated, has been appropriately remediated and investigated, and as such has been delisted as the investigation and remediation of that property has resulted in it achieving a Class C certification under the applicable New York regulations, with the Department specifically finding that "the primary contaminants of concern at the site [former Foundry parcel] included PCBs and PAHs. PCB contaminated soil and structures have been remediated...No environmental problems associated with the disposal of hazardous waste remain at this site." Further, the 2005 Deed requires that certain institutional controls and other measures be implemented including but not limited to implementation of a soil fill management protocol and as detailed in the November 2011 Hunt Report and as set forth in the proposed Lease, the transloading facility at the Site will be operated in accordance with the 2005 Deed's requirements and in accordance with other requirements imposed by the New York State Department of Environmental Conservation as well as required by additional permits and authorizations sought and obtained for the Site by Hunt Engineers on behalf of the Site Lessee, including a permit issued under the New York State Pollutant Discharge Elimination System Program ("SPDES") whereby a Storm Water Pollution Prevention Plan ("SWPPP") has been developed and will be implemented and further detailed below, as well as the implementation of permanent stormwater measures on the Site have been designed and will be constructed as part of the Facility on the Site.

*E. Stormwater.* As detailed in the documents reviewed by the Village herein, no significant adverse impacts to stormwater are anticipated, as the Site is the subject of a permit issued under the SPDES permit program administered by the Department, including measures that will be implemented during construction. Further, the Site which has been the subject of investigations and remedial actions is the subject of a soil fill management plan that provides conditions on the excavation and handling of soils and which will be implemented as part of the conditions under the Lease, including maintaining measures for the construction and development of the Site to control stormwater runoff including the implementation of a SWPPP. Further, as discussed, previously in this resolution, the transloading facility will be operated in accordance with DEC requirements for the retention of stormwater.

*F. Endangered Species.* As detailed in the correspondence to the New York State Department of Environmental Conservation, a survey was undertaken to determine whether endangered or threatened plant or animal species were located on the Site. Based upon the DEC review of these matters, the development of the Site and the Lease will not adversely impact such species.

**NOW THEREFORE BE IT FURTHER RESOLVED AS FOLLOWS:**

IV. The Village has considered the Lease pursuant to the parameters and criteria set forth in 6 N.Y.C.R.R. §§617.2(b) and 617.3(g) and based on the foregoing the Village finds that

the Lease will not have a significant adverse impact on the environment and hereby adopts a negative declaration for the lease by PPD to the Wellsboro & Corning Railroad, LLC.

V. This resolution has been prepared in accordance with Article 8 of the New York Environmental Conservation Law and associated regulations under the New York State Environmental Quality Review Act by the Village of Painted Post with its offices at 261 Steuben Street, Painted Post, New York.

VI. The requirements of SEQRA concerning the lease have been satisfied.

VII. The resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

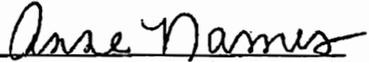
	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[ X ]	[ ]	[ ]	[ ]
William Scheidweiler	[ ]	[ ]	[ ]	[ X ]
Richard Lewis	[ X ]	[ ]	[ ]	[ ]
Richard Thorne	[ X ]	[ ]	[ ]	[ ]
Ralph Foster	[ X ]	[ ]	[ ]	[ ]

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, Clerk of the Village of  
Painted Post, New York

**RESOLUTION OF  
THE VILLAGE OF PAINTED POST FOR THE PROPOSED  
SURPLUS WATER SUPPLY AGREEMENT**

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 (the "Village") sell certain surplus potable water from the Village water supply to SWEPI LP, ("SWEPI") having an address of 200 Diary Ashford Street, Houston, Texas 77079, as the Village desires to sell such surplus water in accordance with the proposed contract referenced herein, and the Village has the authority to sell such surplus water, and the Village water supply has capacity to sell surplus water as proposed without adversely impacting the water supply to persons currently receiving it from the Village supply;

**WHEREAS**, the Village has considered its capacity to supply potable water to current users of the Village water supply system and future users and based upon among other documents and information the report be prepared by Hunt Engineers, Architects and Land Surveyors P.C. dated November 11, 2011 including Hunt's analysis of the Village's water supply system and the capacity of the Village water supply system to provide to surplus potable water as proposed in the proposed surplus water sale agreement, without adversely impacting the customers of the Village water supply system, including without adversely impacting water pressure and ability to supply such customers;

**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 1,000,000 gallons per day ("gpd") which would be available for sale 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**, in accordance with the proposed surplus water supply agreement presented at this meeting, the Village has provided protections so as to ensure that the sale of surplus potable water shall not adversely impact customers of the Village water supply, including provisions that authorize the Village to restrict the supply of water to SWEPI in the event of a drought restriction emergency or unforeseen operational problem or other so-called *force majeure* event as set forth in more detail in the proposed water sale agreement;

**WHEREAS**, the Village has considered that the water to be supplied under the surplus contract shall be supplied from Village wells distributed to the Village water supply system and withdrawn from a facility located at the former Ingersoll Rand Foundry Site and in particular at an 11.8 acre portion as more fully set forth in the resolution concerning the approval of the lease to utilize the Site as a transloading facility. The Village finds that supplying the surplus water as

proposed in the surplus water sale agreement presented at this meeting is appropriate and is consistent with the zoning for the area where the Site is located, and the sale of such surplus water in the manner proposed at the Site which is to load such water on rail cars for distribution away from the Site is also not inconsistent with long range plans for the Village, and the Village has determined that based upon the findings made under the New York State Environmental Quality Review Act in another resolution enacted by the Village, and based other findings that it has made herein concerning the approval of the lease for operation of the Site as a transloading facility, that sale of surplus potable water as proposed is appropriate and in the interests of the Village;

**NOW, THEREFORE BE IT RESOLVED**, that upon due consideration by the Village of the proposed lease for the transloading facility to be constructed and operated at a portion of the former Ingersoll Rand property known as the Site, as well as the Village's consideration of the form of the surplus water sale agreement presented at this meeting, including the proposed amounts to be paid by SWEPI for the surplus water, and the Village's review of appropriate documentation and information including but not limited to the negative declaration and Type II determination under SEQR the Village makes the following findings:

- (i) The form and substance of the Surplus Water Sale 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 Surplus Water Sale 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 execution of the Lease Agreement and pending the receipt by the Village of \$230,000.00 from SWEPI, L.P. as consideration under the Surplus Water Sale Agreement which is hereby designated to be used, on behalf of Painted Post Development, LLC, together with other available monies of the Village for the satisfaction by the Village of a certain Mortgage and payoff of a certain Note (\$230,000.00 outstanding principal plus all accrued interest) on behalf of Painted Post Development, LLC, of which the Village is the sole member, associated with the former Ingersoll Rand Foundry. The execution of the Surplus Water Sale 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.
- (i) 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.

- (iii) 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.
- (iv) The resolution will take effect immediately.

Said matter having been put to a vote, the following votes were recorded:

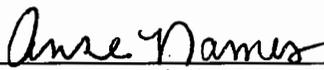
	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Roswell Crozier, Jr.	[ X ]	[   ]	[   ]	[   ]
William Scheidweiler	[   ]	[   ]	[   ]	[ X ]
Richard Lewis	[ X ]	[   ]	[   ]	[   ]
Richard Thorne	[ X ]	[   ]	[   ]	[   ]
Ralph Foster	[ X ]	[   ]	[   ]	[   ]

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, Clerk of the Village  
 of Painted Post, New York