

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.

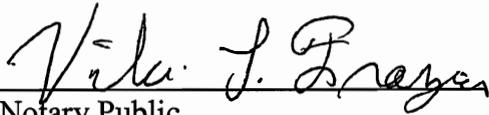
6. Furthermore, it should be noted that the Susquehanna River Basin Commission provides rigorous permitting requirements and regulation of all water use throughout the Susquehanna River Basin, which includes the Village. The water withdrawal associated with the Village of Painted Post is regulated by 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

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


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