

**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 mooting each of the claims made by Petitioners.

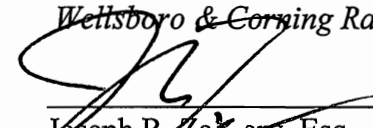
AS AND FOR A TWELFTH OBJECTION IN POINT OF LAW

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~~



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SWEPI, LP
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Pittsford, NY 14534

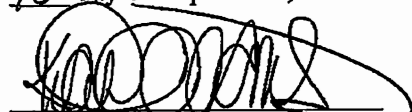
VERIFICATION

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CHESTER) ss.:

MATTHEW MYLES being duly sworn, deposes and says he is the General Manager of the Wellsboro & Corning 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

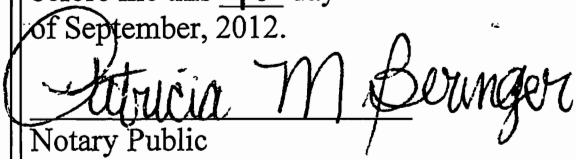
COMMONWEALTH OF PENNSYLVANIA
Notary Seal
KATHLEEN E. THOMS, Notary Public
East Goshen Twp., Chester County
My Commission Expires May 04, 2014

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



John K. Fiorilla
856.914.2054
jfiorilla@capehart.com

September 11, 2012

UPS OVERNIGHT DELIVERY

Supreme Court of New York
Attention: Betty
County Court Building
3 East Pulteney Square
Bath NY 14810

**Re: In the Matter of the Application of Sierra Club, et al, Petitioners
For Judgment Pursuant to Article 78 of the Civil Practice Law and Rules
Against The Village of Painted Post, et al, Respondents.
Our File #9125-51212
Index No. 2012-0810**

Dear Betty::

This firm represents the Respondent, Wellsboro and Corning Railroad, LLC, in the above matter.

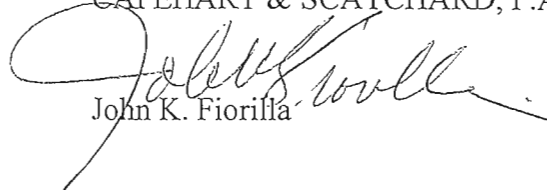
Enclosed are an original and two copies of the Verified Answer and Objections In Point of Law of Respondent, Wellsboro and Corning Railroad, LLC.

Kindly file the same and return a stamped "filed" copy to us in the enclosed stamped, self-addressed envelope provided.

Thank you for your courtesy.

Sincerely yours,

CAPEHART & SCATCHARD, P.A.



John K. Fiorilla

JKF:pmb
Encs.

cc: (w/c encl. via regular mail)
Rachel Treichler, Esq.
Richard J. Lippes, Esq.
Joseph D. Picciotti, Esq.
Kenneth Charron, Esq.

2337439

