

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF STEUBEN

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

Petitioners,

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

-against-

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

Respondents.

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

Index No. 2012-0810CV

Justice Alex R. Renzi

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

KATE BARTHOLOMEW, being duly sworn, deposes and says:

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

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

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

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

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

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

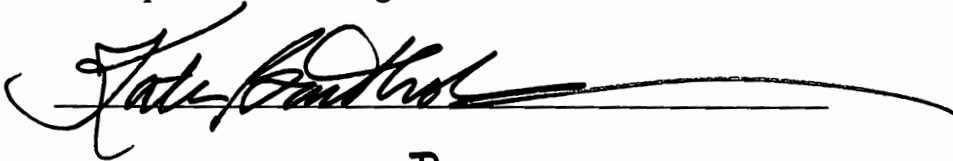
8. One of our Finger Lakes Group Executive Committee members, Eugene Stolfi, has provided an affidavit with some of his water testing results and his interpretation of what these results may signify.

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

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

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

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



Sworn to before me this 18<sup>th</sup> day of December 2012.

  
Notary Public, State of New York

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