

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

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

Petitioners,

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

-against-

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

Respondents.

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

Index No. 2012-0810CV

Justice Alex R. Renzi

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

EUGENE STOLFI, being duly sworn, deposes and says:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

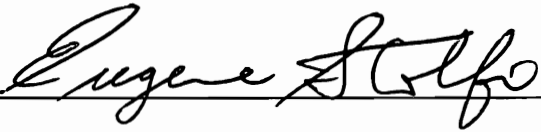
26. Our water supply is not unlimited—the more we remove from this glacial pocket, the harder the water becomes.

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

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

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

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



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



Notary Public, State of New York

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

Exhibit A

Exhibit A

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

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