

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 FURTHER
SUPPORT OF RESPONDENTS'
MOTIONS AND IN REPLY TO
OPPOSITION PAPERS
SUBMITTED BY THE
PETITIONERS

Index No.: 1175-12

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

Robert M. Drew, being duly sworn deposes and says:

1. As set forth in more detail in my affidavit dated August 1, 2012, I am a principal with the firm of Hunt Engineers, Architects & Land Surveyors, P.C. ("Hunt Engineers"), and I submit this affidavit in further support of Respondents' motion for summary judgment and seeking dismissal of the petition in all respects. As with my original affidavit dated August 1,st the statements in this affidavit are based upon my personal knowledge from working on the facility at issue, which I will continue to refer to as the Transloading Facility located at 350 West Water Street in the Village of Painted Post, New York (the "Village").

2. I submit this affidavit to correct inaccurate statements contained in various papers submitted by Petitioner, including and found in an affidavit dated December 19, 2012 from Mr. Paul Rubin and a second affidavit from him dated January 25, 2013.

A. Petitioners' Claims that Extensive Testing and Analysis Should Have Been Completed Concerning the Sale of Water from the Village Wells and the Development of the Transloading Facility Disregards Approvals Previously Issued for the Wells and for the Sale of Water and Disregards the Historical Production Data Available Showing the Wells Have More Than Sufficient Capacity to Provide Surplus Water

3. Mr. Rubin's two (2) affidavits claim that the Village should have completed extensive groundwater testing analysis of the aquifer from which surplus water is to be sold prior to the Village's approval of the contract for such sale and prior to the Village's approval of the construction of the Transloading Facility. Mr. Rubin's allegations are completely irrelevant to this matter, where as here the Village Wells at issue are fully permitted by the New York State Department of Environmental Conservation, and the sale of surplus water to SWEPI LP ("SWEPI"), was previously approved by the Susquehanna River Basin Commission ("SRBC"). Moreover, as set forth in detail in my previous affidavit and in the record in this matter, the New York State Department of Health specifically reviewed the Transloading Facility at issue before it was allowed to operate and it determined that the Transloading Facility met in all respects applicable requirements.

4. Mr. Rubin cites to no regulation, statute or other requirement that mandates the testing which he contends the Village was required to undertake on wells which have previously been permitted in accordance with applicable law at production capacities which exceed by a significant margin the requirements of Village residents, and such production exceeds any requirements associated with the sale of the surplus water under the contract with SWEPI. See the Affidavit of Larry Smith sworn to August 1, 2012 and the Affidavit of Larry Smith sworn to January

9, 2013 (referencing production data for the Village Wells submitted by the Village to SRBC as part of SRBC's approval of the proposed sales of surplus water). Indeed, there can be no dispute that the Village Wells previously produced water for area industries at volumes significantly exceeding the levels which are needed to meet the current requirements of Village residents and the surplus water contract.

5. Mr. Rubin also refers to guidance documents that allegedly require testing be completed on the Village Wells including a technical guidance memorandum ; however, such testing and study is not required on wells, such as those here, that have previously been permitted at specified production capacity and which production data demonstrates the rated capacity remains accurate. For example, Mr. Rubin refers to guidance issued by the New York State Department of Environmental Conservation entitled "Recommended Pumping Test Procedures for Water Supply Applications." As expected from the title of this document, this guidance was developed for production wells that are being developed or when the capacity of a well is sought to be expanded, but that is not the case here. In fact, the Village of Painted Post wells have been utilized for many decades, and no application was made to expand the capacity of such wells as part of the operation of the Transloading Facility or the sale of surplus water. Indeed, the Village wells have a long and extensive production history of over five (5) decades that demonstrates sufficient capacity to supply the requirements of the Village and supply the surplus water as proposed under the contract.

6. It should be noted that by an authoritative source cited by Mr. Rubin himself, the Village wells have demonstrated that they have more than sufficient capacity to provide water to residents and to support the sale of surplus water as contemplated by the agreement with SWEPI and as approved by the SRBC. As stated by Mr. Rubin in his affidavit at paragraph 12 "safe yield is

defined in the groundwater foundation's glossary of groundwater as: the annual amount of water that can be taken from a source of supply over a period of years without depleting that source beyond its ability to be replenished naturally in wet years." As demonstrated by the data provided by the Village of Painted Post to SRBC and referred to in Larry Smith's affidavits dated August 1, 2012 and January 9, 2013, the Village wells have demonstrated over many years that they have more than adequate capacity to exceed the requirements of Village residents as well the requirements for proposed sale of surplus water here.

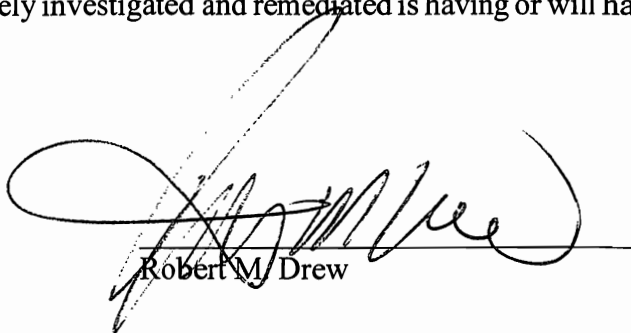
B. The November 11, 2011 Hunt Engineering Report Properly Analyzed the Capacity of the Village Well Pumps and Distribution System to Supply Surplus Water Using Accepted Hydraulic Pipe Modeling and Software Based on the Existing System Information, Further, There is No Basis for Any Claim that the Site of the Transloading Facility is Adversely Impacting Village Water Distribution System

7. Mr. Rubin is critical of the November 11, 2011 Hunt Engineering Report stating that the Hunt Report has no "hydrogeologic or scientific merit whatsoever relative to the well or Aquifer yield." Mr. Rubin apparently did not read the full Report, as it provides specific information as to the methodology utilized to develop the model to demonstrate production yields.

8. Furthermore, the November, 2011 Hunt Engineering Report was provided to the New York State Department of Health which determined that the Report provided sound basis to show that the Village's water system was more than adequate to meet the needs of Village residents sale of surplus water as contemplated in this matter. Historical data from the Village's indicated that the yield of their wells was not in question.

9. Petitioner's counsel also makes allegations that the Village water may have been adversely impacted by a portion of the site on which the Transloading Facility is located. As detailed in my previous affidavit as well as in the November 11, 2011 Hunt Engineering Report and in the Administrative Record in this matter, the site of the Transloading Facility includes the former

Ingersoll Rand Foundry property, and such property has been the subject of significant investigation, as well as remedial actions and clean up. As a result of the investigation and remediation undertaken, DEC in fact de-listed the site (which is an unusual step for DEC to take) with DEC specifically finding that "the contamination identified at the [site] has been properly remediated." Further, as detailed in my previous affidavit, there is no credible information indicating that this de-listed site which has been extensively investigated and remediated is having or will have any adverse impact on Village water.



Robert M. Drew

Sworn to before me this
21 day of February, 2013.

Darcey L. Thistle
Notary Public

DARCEY L. THISTLE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01TH6157427
Qualified in Steuben County
My Commission Expires December 11, 2014