

SUPREME COURT  
STATE OF NEW YORK COUNTY OF STEUBEN

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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.

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

Joseph D. Picciotti, being duly sworn deposes and says:

1. I am a lawyer employed with the firm of Harris Beach PLLC, counsel for Respondents Village of Painted Post, Painted Post Development, LLC and SWEPI, LP (hereinafter each of the foregoing may be referred to collectively as "Respondents"). I submit this affidavit in further support of Respondents' motions for summary judgment and/or to dismiss of the Petition. This affidavit is based upon my personal knowledge of the pleadings and proceedings in this matter.

2. As set forth in the Memorandum of Law submitted herewith dated February 22, 2013 (hereinafter, the "Reply Memorandum"), as well as Respondents' Memorandum of Law filed on August 1, 2012, this matter is moot because construction of the Transloading Facility has been completed and because, due to *laches*, Petitioners have failed to pursue their remedies with diligence. As discussed in the Reply Memorandum, Petitioners' counsel's own website contains a

AFFIDAVIT IN  
FURTHER SUPPORT OF  
RESPONDENTS' MOTIONS  
AND REPLY TO  
PETITIONERS' OPPOSITION  
PAPERS

Index No.: 1175-12

section entitled "Media Coverage of Painted Post Withdrawals and Related Issues" and that section of her website identifies various newspaper articles and other items dating back to April 17, 2011, including articles discussing the Susquehanna River Basin Commission approvals associated with this matter and discussing the Village's plans to construct the Transloading Facility. (Attached hereto as Exhibit "A" is a copy of a page from that website).

3. For the reasons set forth in detail in the Reply Memorandum submitted herewith, both the Organizational and Individual Petitioners have failed to demonstrate that they have standing in this matter because they have not alleged injury different from the public at large. In addition, I note that some of the Petitioners claim to live within the Village of Painted Post and also claim to live in close proximity to the Transloading Facility. Attached as Exhibit "B" are printouts of Google map directions showing the distances from the homes of Petitioners, John Marvin, Virginia Hauff and Therese and Michael Finneran, to the Transloading Facility. We provide this information to identify the actual distances between those Petitioners and the Transloading Facility.

4. For the reasons set forth in the Affidavits and Memoranda of Law submitted to this Court on behalf of Respondents, including those submitted on February 22, 2013, as well as Respondents' Notice of Motion and papers submitted on August 1, 2012, this Court should grant in all respects the motion to dismiss and/or for summary judgment in this matter.

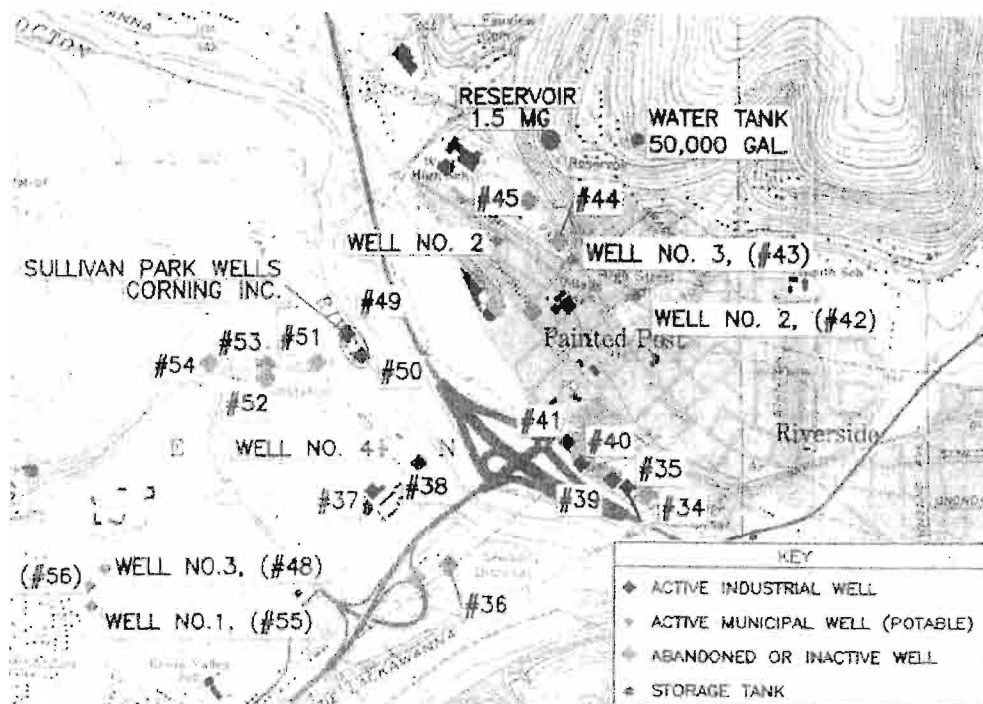
  
\_\_\_\_\_  
Joseph D. Picciotti

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

  
\_\_\_\_\_  
Notary Public

**DOUGLAS F. KALETA**  
Notary Public, State of New York  
No. 01KA6058487  
Qualified in Monroe County  
Commission Expires May 14, 2015

# Law Office of Rachel Treichler



Close-up of a section of Fig. 3-1 showing groundwater well locations in the Village of Painted Post and surrounding areas from *Chemung River Valley Water Study*, Stearns and Wheler, September 2002.

## Painted Post Water Withdrawal Materials

### Court Filings

Verified petition and order to show cause in *Sierra Club et al., v. Village of Painted Post, et al.*, filed June 25, 2012, Index No. 2012-0810.

Verified answer and motion to dismiss and/or for summary judgment with supporting documents, filed Aug. 3, 2012, by respondents Village of Painted Post, Painted Post Development LLC and SWEPI

Verified answer, filed Sept. 10, 2012, by respondent Wellsboro & Corning Railroad

Notice of motion to dismiss and/or for summary judgment and memorandum of law, filed October 10, 2012, by respondent Wellsboro & Corning Railroad.

Memorandum of law and supporting affidavits, filed January 28, 2013, by petitioners.

Click here for [Materials on the Hydrogeology of the Corning Aquifer](#)

### Media Coverage of Painted Post Withdrawals and Related Issues

- 02/10/13 [Painted Post Board to Discuss What's Next \(PDF\)](#), Jeffrey Smith, *Corning Leader*, p. A1.
- 01/30/13 [Hearing set for Painted Post water lawsuit](#), Derrick Ek, *Corning Leader*, p. A1
- 12/26/12 [Water shortage stopping growth in Tioga County](#), Cheryl R. Clarke, *Williamsport Sun-Gazette*
- 12/13/12 [Village's Future Debated at Packed Forum](#), Derrick Ek, *Corning Leader*, p. A1
- 10/05/12 [Painted Post lawsuit moves to different court](#), Derrick Ek, *Corning Leader*
- 10/05/12 [Trains no longer running at night. Painted Post residents say](#), Jeffrey Smith, *Corning*

- Leader*
- 9/15/12 [Painted Post fracking rally: Residents, activists join forces](#), Jeffrey Smith, *Corning Leader*
- 09/11/12 [Residents Weary of Night Trains \(PDF\)](#), Jeffrey Smith, *Corning Leader*
- 09/11/12 [Residents Weary of Night Trains \(PDF\)](#), Jeffrey Smith, *Corning Leader*
- 09/10/12 [Board Eyes Uses for Water Sales Funds \(PDF\)](#), Jeffrey Smith, *Corning Leader*
- 08/26/12 [Painted Post Water Sales: Late Trains Rattle Residents \(PDF\)](#), Jeffrey Smith, *Corning Leader*
- 07/23/12 [Hearing on Water Sales Lawsuit Delayed](#), Derreck Ek, *Corning Leader*
- 07/12/12 [Stop Painted Post Water Sales? It's Not Likely \(PDF\)](#), Bob Rolfe, *Corning Leader*
- 07/10/12 [Painted Post faces lawsuit over water project: Sierra Club, others want to village to conduct new environmental review](#), Ray Finger, *Elmira Star-Gazette*
- 07/10/12 [Painted Post hires attorney in water suit](#), Jeffrey Smith, *Corning Leader*
- 07/06/12 [Painted Post Water Lawsuit](#), Walter Smith-Randolph, *WENY TV*
- 07/06/12 [Lawsuit Filed Against PP Bulk Water Sale Project \(PDF\)](#), Derrick Ek, *Corning Leader*
- 07/05/12 [Lawsuit Filed Over Water Exports to Gas Industry](#), Stacey Minchin, *WETM TV*
- 06/14/12 [Water Station on Track to Be Complete by End of July](#), Jeffrey Smith (PDF), *Corning Leader*
- 06/11/12 [Water Sale Cause for Concern \(PDF\)](#), Mary Finneran, Letter to the Editor, *Corning Leader*
- 06/07/12 [Water Sales to Fracking Industry Stopped in Southern Ohio](#), Buckeye Forest Council, *ecowatch.org*
- 06/04/12 [Drillers Seek Permits for River Water \(PDF\)](#), Leader Staff, *Corning Leader*
- 06/02/12 [Removal of billions of gallons of water from the earth's surface arouses new opposition to fracking](#), Bob Downing, *Akron Beacon Journal*
- 05/04/12 [The Real Cost of Water Sales \(PDF\)](#), David Peris, Letter to the Editor, *Corning Leader*
- 05/03/12 [Work Under Way on Water Loading Facility \(PDF\)](#), Jeffrey Smith, *Corning Leader*
- 05/01/12 [Village of Painted Post could earn \\$4M selling water](#), Jeffrey Smith, *Corning Leader*
- 04/30/12 [How much is Painted Post water worth? Officials aren't telling, but expert says public has right to know](#), Jeffrey Smith, *Corning Leader*
- 03/26/12 [Village of Painted Post Set to Sell Water](#), YNN
- 03/24/12 [PP to sell water for drilling](#), *Corning Leader*
- 03/17/12 [Municipal water export: Whose water? Whose rights?](#), Rachel Treichler and Mark Schlechter, *Steuben Courier Advocate*
- 03/12/12 [For sale: Municipal water rights](#), Bobby Magill, *Fort Collins Coloradoan*
- 02/23/12 [Painted Post to Sell Surplus Water](#), Bobby Brooks, *WETM TV*
- 02/08/12 [Proposed Painted Post Water Loading Site Will Try To "Blend In,"](#) Chris Hush, *WETM TV*
- 02/07/12 [Painted Post facility may break ground in March](#), Jeffrey Smith, *Corning Leader*
- 01/31/12 [Painted Post water deal moves forward: Village could sell 1 million gallons daily](#), Jeffrey Smith, *Corning Leader*
- 01/27/12 [Don't Let Drillers Tap our Water \(PDF\)](#), Jean Wosinski, Guest View, *Corning Leader*, p. 4A
- 09/21/11 [Local officials briefed on water withdrawals, gas drilling issues](#), Derrick Ek, *Corning Leader*
- 09/15/11 [Plan to Sell Water Moves Ahead \(PDF\)](#), Jeffrey Smith, *Corning Leader*, p. 1A
- 09/14/11 [Selling City Water a Good Idea \(PDF\)](#), Editorial, *Corning Leader*, p. 4A
- 09/12/11 [City in Talks to Sell Water for Drilling \(PDF\)](#), Jeffrey Smith, *Corning Leader*, p. 2A
- 08/05/11 [Water Sale Plan Raises Concerns \(PDF\)](#), Frances Mikolajczak, Letter to the Editor, *Corning Leader*
- 07/29/11 [What Are Legislators Thinking? \(PDF\)](#), Virginia Wright, Letter to the Editor, *Corning Leader*
- 07/27/11 [Painted Post closes in on deal to sell water for fracking](#), *Corning Leader*
- 07/12/11 [Painted Post Fracking Water Deal Progresses \(PDF\)](#), Jeffrey Smith, *Corning Leader*, p. 2A
- 06/29/11 [Lawyer Hired for PP Depot: Water Facility Would Supply Gas Drillers \(PDF\)](#), Jeffrey Smith, *Corning Leader*, p. 1A
- 06/23/11 [PP to Mull Proposal for Water Depot \(PDF\)](#), Jeffrey Smith, *Corning Leader*
- 05/16/11 [Questions about Selling Water \(PDF\)](#), Frank Anastasio, Letter to the Editor, *Corning Leader*
- 05/10/11 [Selling water a good idea for city](#), by Leader Staff, *Corning Leader*
- 05/08/11 [City Considers Selling Water: News of Painted Post Plan Has Corning Officials Interested \(PDF\)](#), *Corning Leader*, p. 1A.
- 04/25/11 [Water would be shipped to Pa. for use in fracking](#), Jeff Murray, *Binghamton Press and Sun Bulletin*
- 04/21/11 [Let Your Voice Be Heard Now \(PDF\)](#), *Corning Leader* editorial, p. 4A.
- 04/17/11 [Water station could help Painted Post cash in on fracking](#), Derrick Ek, *Corning Leader*

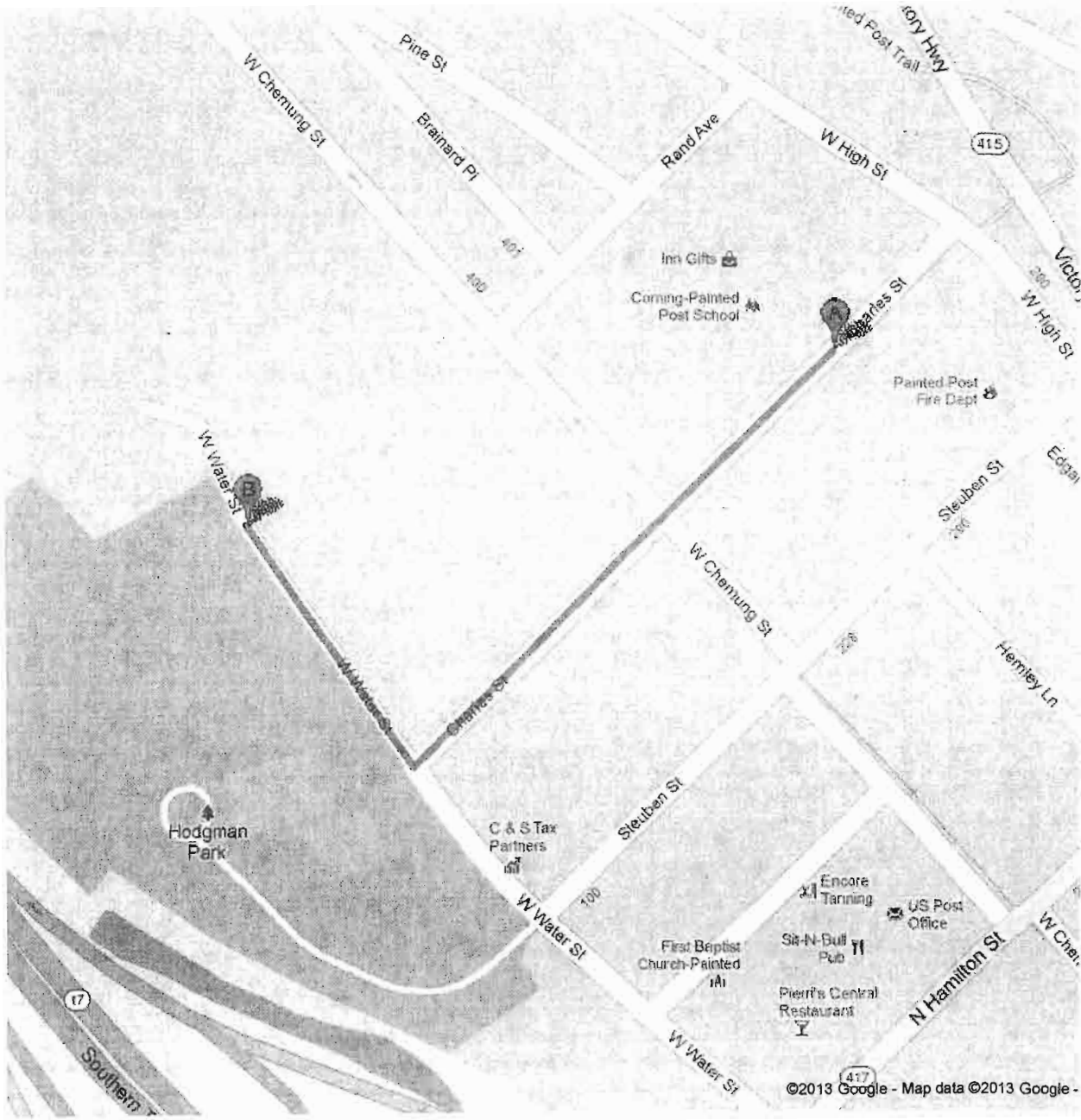
## Materials on the Hydrogeology of the Corning Aquifer


[Chemung River Valley Water Study](#), Town of Erwin, Town of Corning, City of Corning, Village of Painted Post,

Google

Petitioner Marvin

Directions to 350 W Water St, Painted Post, NY 14870  
0.3 mi – about 1 min




 240 Charles St, Painted Post, NY 14870

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1. Head **southwest** on **Charles St** toward **W Chemung St** go 0.2 mi  
total 0.2 mi

 2. Turn **right** onto **W Water St** go 0.1 mi  
total 0.3 mi  
Destination will be on the right

 350 W Water St, Painted Post, NY 14870

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These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

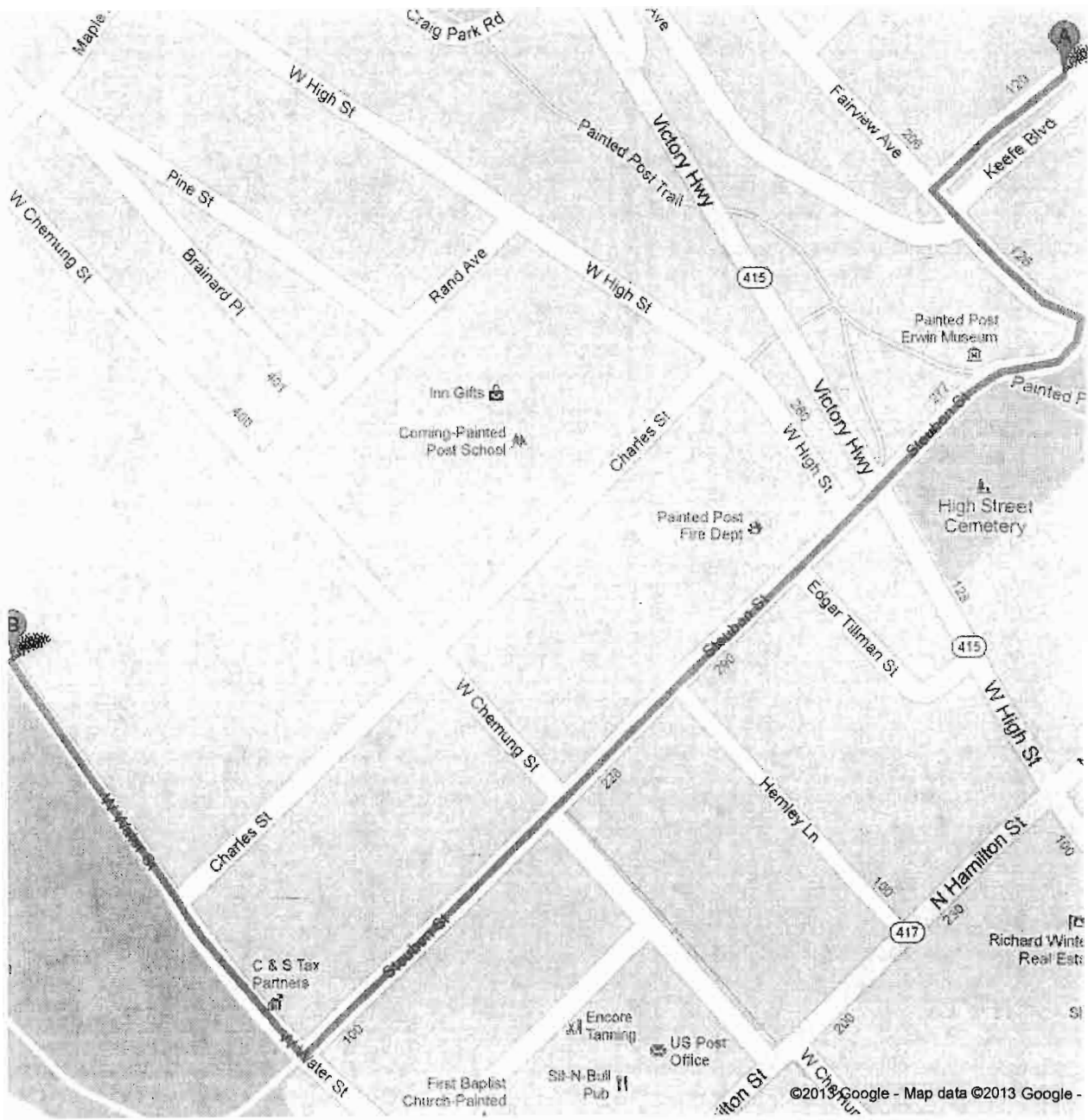
Directions weren't right? Please find your route on [maps.google.com](http://maps.google.com) and click "Report a problem" at the bottom left.

Google

*Pehtoner Virginia Hoff*

Directions to 350 W Water St, Painted Post, NY 14870

0.7 mi – about 3 mins



 116 Keefe Blvd, Painted Post, NY 14870

- 
1. Head **southwest** on **Keefe Blvd** toward **Fairview Ave** go 318 ft  
total 318 ft
  -  2. Turn **left** onto **Fairview Ave** go 364 ft  
total 0.1 mi
  -  3. Take the 2nd right onto **Steuben St**  
About 2 mins go 0.4 mi  
total 0.5 mi
  -  4. Turn **right** onto **W Water St**  
Destination will be on the right go 0.2 mi  
total 0.7 mi

 350 W Water St, Painted Post, NY 14870

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Map data ©2013 Google

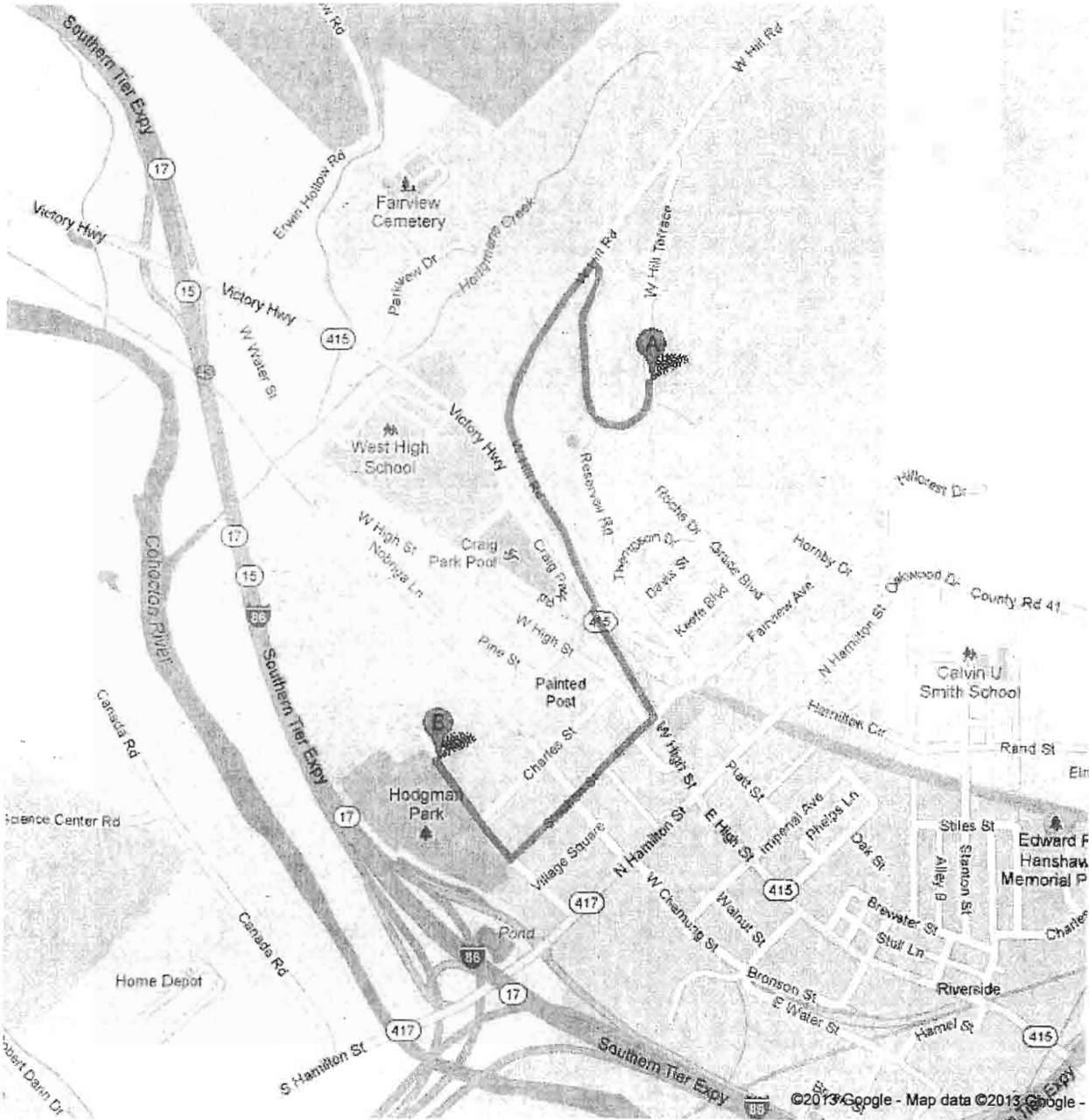
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Pet owners Michael and Therese Finneran


Google

Directions to 350 W Water St, Painted Post, NY 14870  
1.5 mi – about 6 mins



 123 W Hill Terrace, Painted Post, NY 14870

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- 1. Head **south** on **W Hill Terrace** toward **path** go 0.4 mi  
total 0.4 mi  
About 51 secs
  
  -  2. Turn **left** onto **W Hill Rd** go 0.5 mi  
total 0.9 mi  
About 2 mins
  
  -  3. Turn left onto **NY-415** go 0.2 mi  
total 1.1 mi  
About 2 mins
  
  -  4. Take the **1st right** onto **Steuben St** go 0.3 mi  
total 1.4 mi  
About 55 secs
  
  -  5. Take the **3rd right** onto **W Water St** go 0.2 mi  
total 1.5 mi  
Destination will be on the right

 350 W Water St, Painted Post, NY 14870

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Map data ©2013 Google

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